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2 Q. And then do you see that

3 Ms. Thedford includes you on the email string
4 on Tuesday, October 6th, at 5:52?

5 A. Yes.

6 Q. And she asks you and Dave Klos and
7 Kristin Hendrix for advice on that particular
8 Request No. 2 that I have just read; right?

9 A. Yes.

10 Q. Okay. Can you tell me who
11 Ms. Thedford is?

12 A. She was an attorney that was in the
13 legal group.

14 Q. At Highland Capital Management,
15 L.P.?

16 A. I'm -- I'm -- I'm -- I don't
17 remember if she was an employee of Highland or
18 any of the advisors.

19 Q. Okay. Do you know if she served as
20 the corporate secretary for both HCMFA and
21 NexPoint?

22 A. Yes.

23 Q. And -- okay.

24 Do you know whether Ms. Thedford
25 held any positions in relation to the retail

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2 funds as we defined that term?

3 A. Yes.

4 Q. What is your understanding of the
5 positions that Ms. Thedford held at the retail
6 funds?

7 A. I -- I recall her being an officer.
8 I don't recall her title.

9 Q. Okay. Is she still an officer at
10 any of the retail funds today?

11 A. No.

12 Q. Do you know when she ceased to be an
13 officer of the retail funds?

14 A. Approximately.

15 Q. And when did she approximately cease
16 to be an officer of the retail funds?

17 A. It was in -- it was in early of
18 2021.

19 Q. Okay. Do you know when she became
20 an officer of the retail funds?

21 A. I don't recall.

22 Q. To the best of your recollection,
23 was she an officer of the retail funds in
24 October of 2020?

25 A. I believe so.

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2 Q. Okay. Do you know what title she
3 held in her capacity as an officer, if any?

4 A. I told you I don't remember.

5 Q. Okay. So she sends this email to
6 you at 5:52 p.m. on October 6th.

7 And if we can scroll up to the
8 response, you responded a minute later with a
9 one-word answer: Yes.

10 Do you see that?

11 A. Yes.

12 Q. And -- and yes is -- yes was in
13 response to the retail board's Question No. 2,
14 right, whether there are any material
15 outstanding amounts currently payable or due in
16 the future?

17 A. Yes.

18 MR. MORRIS: And can we scroll up to
19 see what happened next.

20 Q. So Ms. Thedford writes back to you a
21 few minutes later and she asks whether you
22 could provide the amounts.

23 Do you see that?

24 A. Yes.

25 Q. And then you respond further and you

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2 refer her to the balance sheet that was
3 provided to the board as part of the 15(c)
4 materials.

5 Do you see that?

6 A. Yes.

7 Q. And -- and did the advisors provide
8 to the board certain balance sheets in 2020 in
9 connection with the 15(c) review?

10 A. Yes, they did.

11 Q. Okay. And were the amounts that
12 were outstanding or that were to be due in the
13 future by the advisors to Highland included in
14 the liability section of the balance sheet that
15 was given to the retail board?

16 A. Yes. Notes would be reflected as
17 liabilities.

18 Q. Okay. And --

19 A. If I'm understanding your question
20 correctly.

21 Q. You are. And -- and -- and those
22 liabilities you -- you were -- you believed
23 were responsive to the retail board's question;
24 correct?

25 A. Yes.

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2 Q. Okay. And then if we can scroll up,
3 you see Ms. Thedford responds to you
4 nine minutes later with a draft response.

5 Do you see that?

6 A. Yes.

7 Q. And she says that she is taking from
8 the 6/30 financials certain information about
9 amounts that were due to HCMLP and affiliates
10 as of June 30th, 2020.

11 Do you see that?

12 A. I do.

13 Q. Okay. And did you believe, as the
14 treasurer of NexPoint and HCMFA and as the CFO
15 of Highland, that the information that
16 Ms. Thedford obtained from the 6/30 financials
17 was accurate and responsive in relation to the
18 retail fund board's question?

19 A. I just want to make sure I
20 understand the question.

21 Are you saying that the financial
22 information provided to the retail board as
23 part of the 15(c) process, which included
24 financial statements as of June 30th of 2021,
25 did I feel like those were responsive to their

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2 questions?

3 Q. Yes.

4 A. Yes.

5 Q. Thank you.

6 MS. DEITSCH-PEREZ: John, it is not
7 in the chat yet. Can you just make sure it
8 gets put in there.

9 MR. MORRIS: Sure.

10 MS. CANTY: I put it in there. I
11 think maybe I just sent it directly, so let
12 me make sure it says to everyone. But I
13 did put it in there. I will try again.

14 MR. MORRIS: Thank you, La Asia.

15 MS. DANDENEAU: What number is it.

16 MR. MORRIS: What, the Bates number?

17 MS. DEITSCH-PEREZ: No, the --
18 this -- yeah, 36 is not in the chat.

19 MR. MORRIS: Okay. We'll get it.

20 MS. DANDENEAU: I think that
21 Ms. Cantly just sent it to me originally.
22 Sorry.

23 MR. MORRIS: Okay. We will get it
24 there.

25 MS. CANTY: Okay. It is there now

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2 for everyone.

3 MS. DEITSCH-PEREZ: Got it. Thank
4 you.

5 Q. Do you recall if the proposed
6 response that Ms. Thedford crafted was
7 delivered to the retail board with the -- with
8 the yellow dates having been completed?

9 A. I don't know.

10 MR. MORRIS: Davor, I'm going to ask
11 that the advisors and -- the advisors of
12 both HCMFA and NexPoint produce to me any
13 report that was given to the retail board
14 concerning the promissory notes at issue,
15 including the obligations under the notes.

16 Q. Do you know -- do you know if
17 ultimately NexPoint informed the retail board
18 in response to its question that NexPoint owed
19 Highland approximately 23 or \$24 million?

20 MS. DANDENEAU: Objection to the
21 form.

22 A. Sorry, are you asking, did NexPoint
23 tell the retail board that it owed Highland?

24 Q. Let me ask a better question,
25 Mr. Waterhouse.

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2 Did -- do you know if anybody ever
3 answered the retail board's question that was
4 Number 2?

5 A. I don't -- I can't say for sure.

6 Q. Okay. Do you recall -- I think you
7 testified earlier that you walked through the
8 advisors' financials with the retail board;
9 correct?

10 A. Yes.

11 Q. And as part of that process, did you
12 disclose to the retail board the obligations
13 that NexPoint and HCMFA had to Highland under
14 promissory notes?

15 A. The retail board, as I stated
16 earlier, receives financial information,
17 balance sheet, income statement information
18 from the advisors. That information is
19 provided to the retail board in connection with
20 the 15(c) process.

21 So any notes between the advisors
22 and the Highland would be -- anything would be
23 detailed in those financial statements.

24 Q. Do you recall in 2020 ever speaking
25 with the retail board about the advisors'

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2 obligations under the notes to Highland?

3 MS. DANDENEAU: Objection to form.

4 MS. DEITSCH-PEREZ: Object to the
5 form.

6 A. I don't recall specifically.

7 Q. Do you have any general recollection
8 of discussing with the retail board the
9 advisors' obligations to Highland under the
10 notes that they issued?

11 MS. DANDENEAU: Object to the form.

12 MS. DEITSCH-PEREZ: Object to the
13 form.

14 A. I just recall generally just -- it
15 is just -- I present the financial statements,
16 and if they have questions, I answer their
17 questions and walk them through.

18 I don't recall what they asked. I
19 don't recall where the discussion went. I
20 don't recall anything of that nature.

21 Q. Okay. Do you know if anybody on
22 behalf of HCMF -- HCMFA ever told the retail
23 board that HCMFA had no obligations under the
24 two 2019 notes that you signed? Withdrawn.

25 Do you know whether anybody on

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2 behalf of HCMFA ever told the retail boards
3 that you weren't authorized to sign either of
4 the two 2019 notes?

5 MS. DANDENEAU: Objection to form.

6 A. I'm not aware.

7 Q. Are you aware of anybody on behalf
8 of HCMFA ever telling the retail boards that
9 your execution of the two 2019 notes was a
10 mistake?

11 MS. DANDENEAU: Objection to form.

12 A. I'm not aware.

13 Q. Are you aware of anybody on behalf
14 of HCMFA ever telling the retail boards that
15 HCMFA did not have to pay the amounts reflected
16 in the two notes that you signed in 2019?

17 A. I'm not aware.

18 Q. Do you know whether anybody ever
19 told the retail boards -- withdrawn.

20 Do you know whether anybody ever
21 told the retail boards that Highland has
22 commenced a lawsuit to recover on the two notes
23 that you signed in 2019?

24 A. I'm not aware.

25 Q. Are you aware of anybody informing

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2 the retail boards that Highland has sued to
3 recover on the NexPoint note?

4 A. I'm not aware.

5 Q. Do you know whether anybody ever
6 told the retail board that Highland had
7 declared a default with respect to the two
8 HCMFA notes that you signed in 2019?

9 A. I'm not aware.

10 Q. Are you aware of anybody ever
11 informing the retail boards that Highland had
12 declared a default under the NexPoint note?

13 A. I'm not aware.

14 Q. Are you aware of anybody telling the
15 retail board that Highland made a demand for
16 payment under the 2019 notes that you signed on
17 behalf of HCMFA?

18 A. I'm not aware.

19 Q. Let's -- let's see if there is a
20 response to Ms. Thedford's email, if we can
21 scroll up.

22 Do you see you responded to
23 Ms. Thedford five minutes after she provided
24 the draft response to you?

25 A Yes

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2 Q. Okay. And do you see that Dustin
3 Norris is copied on this email?

4 A. Yes, he is.

5 Q. Great. Do you know whether
6 Mr. Norris held any positions at either of the
7 advisors as of October 6, 2020?

8 A. I will go back to -- I'm not the
9 legal expert of what appoints you or how or
10 why, but you did see Dustin's name on the
11 incumbency certificate that you produced
12 earlier.

13 Q. Do you know what his title was in
14 October of 2020?

15 MS. DANDENEAU: Objection to form.

16 A. I don't -- I don't recall.

17 Q. Was he -- did he have a title with
18 each of the advisors, to the best of your
19 recollection?

20 A. I don't recall.

21 Q. Do you know why he is included on
22 this email string?

23 A. I didn't add Dustin. It looks like
24 Lauren did. I don't know why she added him or
25 not. You would have to ask her.

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2 Q. Does Mr. Norris play a role in
3 formulating the advisors' responses to the
4 questions asked by the retail board in
5 connection with the 15(c) annual review?

6 MS. DANDENEAU: Objection to form.

7 A. He -- Dustin Norris is there in the
8 board meetings. But -- so he has a role, yes.

9 Q. Okay. And does Mr. Norris hold any
10 positions, to the best of your knowledge, in
11 relation to any of the retail funds?

12 A. I don't -- I don't believe he does.

13 Q. How about Mr. Post, do you know
14 whether Mr. Post holds any position in either
15 of the advisors?

16 A. I mean, he -- he -- yes.

17 Q. What is your understanding of the
18 positions that Mr. Post holds in relation to
19 the advisors?

20 MS. DANDENEAU: Objection to form.

21 A. He is an employee of NexPoint
22 Advisors. He is also the chief compliance
23 officer for -- for NexPoint.

24 Q. Who is the chief compliance officer
25 for HCMFA, if you know?

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2 MS. DANDENEAU: Objection to form.

3 A. That would be Jason as well.

4 Q. Okay. Now, looking at your
5 response, you noted initially that nothing was
6 owed under shared services. Do I have that
7 right in substance?

8 A. Yeah. I think I'm being responsive
9 to Lauren's question here, whether any of the
10 shared service invoices are outstanding.

11 Q. Right.

12 A. Yes.

13 Q. And that is because -- and that is
14 because the retail the retail board has asked
15 for the disclosure of all material obligations
16 that were owed to HCMLP either then or in the
17 future; isn't that right?

18 MS. DANDENEAU: Objection to form.

19 Q. We can go back down and look.

20 A. Look, I don't know if that's a
21 material item, I mean, again, but sure.

22 Q. Okay. But there were no shared
23 services outstanding; correct?

24 MS. DANDENEAU: Objection to form.

25 A. That is what this email seems to

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2 indicate.

3 Q. And you wouldn't have written it if
4 you didn't believe it to be true at the time;
5 correct?

6 A. Correct.

7 Q. And when you referred to shared
8 services outstanding, what you meant there was
9 that neither NexPoint nor HCMFA owed Highland
10 any money under the shared services agreements
11 that they had with Highland as of October 6th,
12 2020; right?

13 A. I don't know if it is as of October
14 6, 2020 or if it was from -- like through the
15 financials -- through the date of the
16 financials as of June 30.

17 Q. Okay. And then you noted that
18 HCMFA -- the HCMFA note is a demand note; right?

19 A. Yes.

20 Q. And then you referred Ms. Thedford
21 to Kristin Hendrix for the term of the NexPoint
22 note. Do I have that right?

23 A. Yes.

24 Q. And then you refer to that agreement
25 that is referenced in the 2018 audited

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2 financials about Highland's agreement not to
3 make demand upon HCMFA until May 2021; correct?

4 A. Correct.

5 Q. And then -- and then the next thing
6 you write is that the attorneys think that BK
7 doesn't change that, but don't know for sure at
8 the end of the day.

9 Do you see that sentence?

10 A. Yes.

11 Q. Which attorneys were you referring
12 to?

13 A. I don't remember.

14 Q. Did you have a conversation with
15 attorneys concerning whether the bankruptcy
16 would change or alter in any way the agreement
17 not to make a demand under the HCMFA note?

18 A. Look, yeah, I mean, I don't
19 specifically remember, but generally, I mean,
20 it is in this email. I don't -- I don't -- I
21 don't -- I don't remember who I talked to or,
22 you know, was it inside counsel, outside
23 counsel, but obviously I talked to somebody.

24 Q. Do you have any recollection --

25 A. Well, I don't even know if it's --

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2 actually, it may not even have been me. I say
3 the attorneys in, you know, a lot of -- like I
4 talked about the team.

5 It could have been someone on the
6 team, like, hey, we need to run this down, and
7 maybe they talked to attorneys again and
8 relayed that information to me.

9 So I really don't know if I spoke or
10 someone else did or -- or, I mean, and maybe it
11 wasn't even from corporate accounting. Maybe
12 it was, you know, other -- I'm kind of
13 summarizing, you know, again, so I don't really
14 know -- I can't really say for sure. I don't
15 remember how I came about of this knowledge.

16 Q. I appreciate your efforts,
17 Mr. Waterhouse, but I will just tell you that
18 if I ask a question and you don't know the
19 answer or you don't recall, I'm happy to accept
20 that. I don't -- I don't want you to
21 speculate, so I want to be clear about that.
22 So I appreciate it.

23 Let me just ask you simply: Do you
24 know what attorneys -- can you identify any of
25 the attorneys who thought that the bankruptcy

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2 process didn't change the agreement?

3 A. I don't recall.

4 Q. Okay. Perfect.

5 And then let's look at the last
6 sentence. It says, quote: The response should
7 include, as I covered in the board meeting,
8 that both entities have the full faith and
9 backing from Jim Dondero, and to my knowledge
10 that hasn't changed.

11 Do you see that?

12 A. Yes.

13 Q. Okay. Prior to October 6th, 2020,
14 had you told the retail board that HCMFA and
15 NexPoint have the full faith and backing from
16 Jim Dondero?

17 A. Yes.

18 Q. Do you remember in the context in
19 which you told the retail board that?

20 A. I mean, generally, yes.

21 Q. Tell me what you recall.

22 A. So we were walking through the
23 financials from the advisors; right? So as I
24 described to you, you have got HCMFA and NPA.
25 And these -- the financials, you know, show

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2 they have liabilities on them that exceed
3 assets.

4 So the retail board has asked, okay,
5 you know, how -- you know, if -- if these
6 liabilities come due or they're payable, you
7 know, how does that come about?

11 Q. And how did you know that the
12 advisors had the full faith and backing from
13 Jim Dondero? What was the basis for that
14 statement that you made to the retail board?

15 A. I talked to Jim about it at some
16 point in the past.

17 Q. And did you tell Mr. Dondero that
18 you were going to inform the retail board that
19 the advisors had his full faith and backing
20 before you actually told that to the retail
21 board?

22 A. I don't recall having that
23 conversation.

24 Q. Do you recall if you ever informed
25 Mr. Dondero that you had disclosed or told the

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2 retail board that the advisors had the full
3 faith and backing of Mr. -- Mr. Dondero?

4 MS. DEITSCH-PEREZ: Object to the
5 form.

6 A. I don't recall discussing that with
7 him at the time.

8 Q. When you told this to the board, was
9 Mr. Dondero participating in the discussion?

10 A. Not that I recall.

11 Q. Withdrawn. Was it not -- withdrawn.

12 Do you recall whether -- when you
13 covered this issue with the board, was that in
14 a -- a Zoom call or a Webex call? Was it a
15 telephone call? Was it in-person? Like where
16 were you physically in relation to the board?

17 A. I believe I was at home.

18 Q. Okay. Can you identify every person
19 that you recall who was present for this
20 disclosure other than -- other than the board
21 members themselves?

22 MS. DEITSCH-PEREZ: Object to the
23 form.

24 A. I don't recall everyone on the call.

25 Q. Can you identify anybody who was on

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2 the call?

3 A. Other than the board members?

4 Q. Yes.

5 A. Lauren Thedford. I mean, there
6 are -- there are many -- my section is just one
7 of many sections that are just -- you know, as
8 you can appreciate, this is a long board
9 meeting.

10 I can't recall specifically, really
11 even generally, or who was on when this was
12 discussed. But Lauren was typically on for the
13 entire time.

14 Q. I apologize if I asked you this, but
15 do either of Mr. Norris or Mr. Post hold any
16 positions relative to the retail funds?

17 A. I think you asked me this already,
18 John.

19 Q. Okay. I just don't recall. Can you
20 just refresh my recollection if I did, in fact,
21 ask you the question?

22 A. I don't believe -- if we can go
23 back. I don't believe Mr. Norris has a title
24 at the retail funds. Mr. -- and Mr. Post is
25 the CCO of the advisor, the advisors.

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2 Q. Okay. Do you know if either of them
3 have a position with the retail board -- with
4 the retail funds?

5 A. I don't believe Mr. Norris has a
6 position with the retail funds.

7 Q. All right. What about Mr. Post?

8 A. Mr. Post is the CCO of the advisors.

9 Q. Okay. Does he hold any position --

10 A. I don't believe so.

11 Q. -- with the retail funds?

12 A. I don't believe so.

13 Q. Okay.

14 A. I don't know if being the CCO for
15 the advisor conveys something for the retail
16 funds. Again, I am not -- that is the legal
17 compliance part of it. I don't know.

18 Q. Why did you tell the retail board
19 that the advisors have the full faith and
20 backing from Mr. Dondero?

21 MS. DANDENEAU: Objection to form.

22 A. It is -- it is -- it is what has
23 been discussed with them prior.

24 Q. And were you -- were you trying to
25 give them comfort that even though the

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2 liabilities exceeded the assets that the
3 advisors would still be able to meet their
4 obligations as they become due?

5 MS. DANDENEAU: Objection to form.

6 MS. DEITSCH-PEREZ: Object form.

7 A. I -- I can't -- I don't remember
8 specifically the conversation, but generally --
9 you know, generally, yes. And that is why --
10 but, you know, again, in this email saying, you
11 know, I am sure I qualified it with the retail
12 board, you know, as I said I like -- you know,
13 to my knowledge, that hasn't changed. But,
14 again, generally -- generally that is what I
15 remember.

16 Q. Okay. Do you recall if in the
17 advisors' response to the retail board's
18 question if the response included any statement
19 concerning Mr. Dondero and -- and the full
20 faith and backing that he was giving to the
21 advisors?

22 MS. DEITSCH-PEREZ: Object to the
23 form.

24 A. I don't -- I don't remember
25 specifically what was provided.

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2 Q. Okay.

3 A. And I don't really -- I don't really
4 remember generally either.

5 Q. Okay.

6 MR. MORRIS: So -- so, again, I'm
7 just going to ask Mr. Rukavina if your
8 clients can produce as soon as possible the
9 15(c) response, the written response that
10 the advisors made, if any, to the board's
11 Question No. 2.

12 I'm not looking for the whole
13 response, but I certainly want the response
14 to Question No. 2.

15 Q. Do you have a general understanding
16 as to the amount by which -- withdrawn.

17 Did -- did the assets of --
18 withdrawn.

19 Did the liabilities of HCMFA exceed
20 its assets in 2020?

21 MS. DANDENEAU: Objection to form.

22 MS. DEITSCH-PEREZ: Objection, form.

23 A. I believe I have already answered
24 that question earlier, I think. I believe I
25 said yes.

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2 Q. Okay. And did the liabilities of
3 NexPoint exceed its assets in 2020?

4 MS. DEITSCH-PEREZ: Objection to
5 form.

6 A. I don't believe so.

7 Q. Okay. So -- so it was only one of
8 the two advisors who had liabilities that
9 exceeded the value of the assets.

10 Do I have that right?

11 MS. DEITSCH-PEREZ: Objection to
12 form.

13 MS. DANDENEAU: Form.

14 A. Yes.

15 Q. And do you know, ballpark, the
16 amount by which the value of HCMFA's
17 liabilities exceeded their assets in 2020?

18 MS. DANDENEAU: Objection to form.

19 A. I don't -- I don't recall.

20 MR. MORRIS: I had specifically
21 requested in discovery the audited
22 financial reports for both advisors and
23 NexPoint. I think I may have gotten one
24 for NexPoint but I'm still waiting for the
25 balance. And I'm going to renew my request

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2 for those documents too.

3 Q. Let's go to the next exhibit, which
4 is Number 10. So I think it is in your stack,
5 Mr. Waterhouse.

6 MR. MORRIS: And we can take the one
7 down from the screen and put up Number 10
8 for everybody.

9 (Exhibit 10 marked.)

10 Q. And I don't know if you have ever
11 seen this before, but I'm really putting it up
12 on the screen for purposes of turning to the
13 very last page of the document.

14 So this is a document that we have
15 been -- that we premarked as Exhibit 10. And
16 we're turning to the last page of the document,
17 which is a document that was filed in the
18 adversary proceeding 21-3004. And -- no, I
19 apologize, I think we -- right there. Perfect.

20 And it is page 31 of 31.

21 MR. MORRIS: I think there may have
22 been some something erroneously stapled to
23 the hard copy that I gave you folks, but
24 I'm looking for page 31 of 31 in the
25 document that begins with the first page of

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2 Exhibit 10.

3 Q. Do you have that, Mr. Waterhouse?

4 A. I don't have it yet. I'm looking.

5 Q. All right. If you look at the top
6 right-hand corner, you will see it says page
7 hopefully something of 31?

8 A. Yes, I've got it now.

9 Q. Okay. You have got 31 of 31. You
10 can take a moment to read that, if you would
11 like.

12 A. (Reviewing document.) Okay.

13 Q. Have you ever seen this before?

14 A. I don't know if I have seen this
15 specific document, but, you know, I've --
16 I'm -- I'm aware of it.

17 Q. And is this the document that you
18 had in mind when you sent that email to
19 Ms. Thedford that we just looked at where you
20 said that Highland had agreed not to make a
21 demand upon HCMFA until May 2021?

22 A. Honestly, I don't -- it wasn't this
23 document. I mean, it's something like this,
24 yes. I mean, yes.

25 Q. Well --

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2 A. It is something like this, but I
3 don't think it was this specific document.

4 Q. Well, but this document does say in
5 the last sentence that Highland agreed not to
6 seek -- not to demand payment from HCMFA prior
7 to May 31, 2021; right?

8 A. Yes.

9 Q. And are you aware of any other
10 document that was ever created pursuant to
11 which Highland agreed not to demand payment on
12 amounts owed by HCMFA before May 31, 2021?

13 A. Hold on. Are you asking, am I aware
14 of a document that by HCMFA that basically says
15 otherwise?

16 Q. No. Let me try again.

17 Are you aware of any other document
18 pursuant to which -- pursuant to which Highland
19 agreed not to make a demand on HCMFA until May
20 31st, 2021?

21 A. I'm -- I think there was something
22 in connection with -- with the -- with the
23 audit that basically says the same thing.

24 Q. Okay. And do you think that the
25 audit is referring to this particular document?

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2 A. I don't know.

3 Q. All right. This document is dated
4 April 15, 2019. Do you see that?

5 A. I do.

6 Q. And do you remember that the audit
7 was completed on June 3rd, 2019?

8 A. Yes.

9 Q. And do you recall that the audited
10 financials -- and I'm happy to pull them up if
11 you would like, but do you recall that the
12 audited financials included a reference to the
13 agreement pursuant to which Highland agreed not
14 to make a demand until May 31st, 2021?

15 A. Yes, I remember.

16 Q. And as part of the process, would
17 you have expected the corporate accounting team
18 to have provided a copy of this document to
19 PwC?

20 MS. DANDENEAU: Objection to form.

21 A. Yes, I would have expected something
22 like this, or again, you know, some document
23 that basically states -- states the deferral
24 till May 31 of 2020.

25 Q. Okay.

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2 A. May 31 of 2021, excuse me.

3 Q. And this document states the
4 deferral that you just described; correct?

5 A. It does.

6 Q. And this document states the
7 deferral that was described in the audited
8 financial statements that we looked at before;
9 correct?

10 A. It does.

11 MR. MORRIS: Okay. Can we scroll
12 down just a little bit to see who signed on
13 behalf of the acknowledgment there.

14 Q. Okay. So Mr. Dondero signed this
15 document on behalf of both HCMFA and Highland;
16 do you see that?

17 A. I do.

18 Q. Okay. Did you discuss this document
19 or the -- withdrawn.

20 Did you discuss the concept of the
21 deferral with Mr. Dondero in the spring of
22 2019?

23 A. I think I testified I don't recall.

24 Q. Okay. Do you know whose idea it was
25 to issue the acknowledgment in this form?

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2 A. I don't recall.

3 MR. MORRIS: Can we scroll back up
4 to the document, please.

5 Q. Do you see in the beginning it says,
6 reference is made to certain outstanding
7 amounts loaned from Highland to HCMFA for
8 funding ongoing operations.

9 Do you see that?

10 A. Yes.

11 Q. And were you aware as the CFO of
12 Highland and as the treasurer of HCMFA that as
13 of April 15, 2019, Highland had made certain
14 loans to HCMFA to fund HCMFA's ongoing
15 operations?

16 A. Yes.

17 Q. And were you aware that those loans
18 were payable on demand and remained outstanding
19 as of December 31st, 2018?

20 A. Yes.

21 Q. And were you aware that those
22 amounts were payable on demand, and they
23 remained outstanding as of April 15, 2019?

24 MS. DEITSCH-PEREZ: Object to the
25 form.

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2 A. Well, this -- this document dated
3 April 15, 2019 says they have been deferred to
4 May 31, 2021.

5 Q. Right. But I'm just sticking to the
6 first paragraph where they refer to the
7 outstanding amounts. And in the end it says
8 the -- it remained outstanding on December
9 31st, 2018, and I think you told me that you
10 understood that, and then I'm just trying to
11 capture the last piece of it.

12 Did you understand that there were
13 amounts outstanding from the loan that Highland
14 made to HCMFA to fund ongoing operations as of
15 April 15th, 2019?

16 A. Yes.

17 Q. Thank you. Let's look at the next
18 sentence. HCMFA expects that it may be unable
19 to repay such amounts should they become due
20 for the period commencing today and continuing
21 through May 31st, 2021.

22 Do you see that?

23 MS. DANDENEAU: Objection to form.

24 A. I do.

25 Q. As the CFO -- withdrawn.

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2 As the treasurer of HCMFA, did you
3 believe that -- do you believe that statement
4 was true and accurate at the time it was
5 rendered?

6 A. I mean, it -- it -- the answer to
7 that is I really didn't have any -- I didn't
8 have an opinion really.

9 Q. Did you do anything to educate
10 yourself in April of 2019 on the issue of
11 whether HCMFA could repay the amounts that it
12 owed to Highland should they become due?

13 A. I don't believe so.

14 Q. Did you at any time form any
15 opinions as to HCMFA's ability to repay all
16 amounts due to Highland should they become due?

17 A. Not really. I guess I don't...

18 Q. Well, you told the retail board that
19 HCMFA's liabilities exceeded their assets in
20 2020; correct?

21 A. Yes.

22 Q. Based on the work that you did to
23 prepare for the retail board, did you form any
24 view as to whether HCMFA would be unable to
25 repay the amounts that it owed to Highland

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2 should they become due?

3 MS. DANDENEAU: Objection to form.

4 A. I mean, I -- when you look at that,
5 to answer you, completely, you know, again,
6 if -- the response I gave the retail board was,
7 you know, the -- the advice -- HCMFA advisors
8 have the -- have the full faith and backing of
9 Jim Dondero. So I didn't form an opinion of
10 whether the advisor could pay it or not.

11 Q. Did you form any view as to whether
12 the advisors could repay the amounts that it
13 owed to Highland should they become due without
14 the full faith and backing of Mr. Dondero?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Form.

17 A. I mean, if you -- if you -- if you
18 take that last statement out, I mean, it would
19 be difficult for HCMFA to pay back demand notes
20 at that time.

21 Q. And it was precisely for that reason
22 that you told the retail board that -- that the
23 retail -- that the advisors had the full faith
24 and backing of Mr. Dondero; correct?

25 MS. DANDENEAU: Objection to form.

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2 A. I mean, yes, as the mouthpiece, I
3 was relaying information.

4 Q. Okay. And you relayed that
5 information with the knowledge and approval of
6 Mr. Dondero; correct?

7 MS. DEITSCH-PEREZ: Object to the
8 form.

9 A. As I stated in the email, I don't
10 believe, and I think I testified I don't
11 believe I had conversations with Mr. Dondero at
12 the time of that board meeting.

13 Q. Did you tell the retail board that
14 the advisors had the full faith and backing of
15 Mr. Dondero without Mr. Dondero's prior
16 approval?

17 A. Yeah, I -- I -- yes, I'm -- like I
18 said, I think I testified earlier, I'm sure I
19 qualified it as well.

20 Q. What do you mean by that?

21 MS. DANDENEAU: Objection to form.

22 A. Again -- again, like I said in the
23 email, it has the full faith and backing of Jim
24 Dondero unless that has changed.

25 Q. Actually that is not what you said,

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2 so let's put the email back up.

3 A. It is -- it is -- it is in the
4 email.

5 Q. Let's put the email back up. You
6 didn't say unless it has changed. You said you
7 believe it hasn't changed; right?

8 A. Okay. And to my knowledge that
9 hasn't changed, that is what it says.

10 Q. That's right.

11 A. But, again, I mean, that is -- I
12 don't know everything. And I'm not in every
13 conversation. I'm not -- to presume that I am,
14 is -- and you have to put myself -- as you
15 started this out, Mr. Morris, I was at home in
16 October of 2020 with COVID -- or, you know,
17 under these COVID times that we described is
18 very difficult.

19 We have all been working at home for
20 really the first time ever, undergoing
21 processes, procedures, control environments
22 that have been untested, and there is poor
23 communication.

24 So I am relaying, as I'm telling you
25 now, what is in the email. And unless

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2 something has changed -- to my knowledge, it
3 hasn't changed, but it could have changed.

4 Q. When you say that the advisors have
5 the full faith and backing from Mr. Dondero,
6 did you intend to convey that, to the extent
7 the advisors were unable to satisfy their
8 obligations as they become due, Mr. Dondero
9 would do it for them?

10 MS. DANDENEAU: Object to the form.

11 MS. DEITSCH-PEREZ: Object to the
12 form.

13 And, John, we have given you a lot
14 of leeway here but this does not seem
15 relevant to this case. You seem sort of
16 taking a complete sort of diversion into
17 the allegations and the complaint just
18 filed on Friday, and so I would ask you to
19 move on because --

20 MR. MORRIS: And I will tell you --
21 I will tell you that I have never read that
22 complaint cover-to-cover. I have nothing
23 to do with the prosecution of those claims.

24 And this issue that we're talking about
25 right now is related solely to the

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2 promissory notes that your clients refuse
3 to pay.

4 So I'm going to continue to ask my
5 questions, and I would ask the court
6 reporter to read back my last question.

7 (Record read.)

8 MS. DEITSCH-PEREZ: And then I
9 believe there were objections to form.

10 Q. You can answer the question.

11 A. Yes.

12 Q. Thank you very much, sir.

13 MR. MORRIS: Can we go back to the
14 other document, please?

15 Q. Mr. Waterhouse, do you know if this
16 document was ever shared with the retail board?

17 A. I don't recall.

18 Q. Did you ever share it with the
19 retail board?

20 A. I don't recall.

21 Q. Did you ever tell the retail board
22 about the substance of this document?

23 A. I don't recall.

24 Q. Did you ever tell the retail board
25 that Highland had agreed not to make a demand

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2 against HCMFA until May 2021?

3 A. I don't recall.

4 Q. Do you know whether anybody on
5 behalf of the advisors ever informed the retail
6 board that Highland had agreed on April 15,
7 2019, not to make a demand against HCMFA under
8 the promissory notes?

9 A. I don't recall.

10 Q. Did you instruct Ms. Thedford or
11 anybody else responding to the retail board's
12 15(c) inquiry to disclose this document?

13 A. Did I instruct Ms. Thedford or
14 anyone else to -- to -- to produce this, to
15 disclose this document? Is that what you -- I
16 just want to make sure.

17 Q. Uh-huh.

18 A. Yeah, I don't -- I don't recall.

19 Q. Did you instruct anybody to inform
20 the retail board, in response to their question
21 as part of the 15(c) process, to -- to tell the
22 retail board about Highland's agreement not to
23 make a demand until 2021?

24 MS. DANDENEAU: Objection to form.

25 A. I don't recall.

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2 Q. Did you ever inform PwC that HCMFA's
3 liabilities exceeded its assets?

4 MS. DANDENEAU: Object to the form.

5 A. I don't -- I don't think I told
6 them. I mean, they -- they audited the
7 financial statements.

8 Q. Did -- do you know if anybody on
9 behalf of Highland ever informed
10 PricewaterhouseCoopers that HCMFA may be unable
11 to repay amounts owing to Highland, should they
12 become due?

13 MS. DANDENEAU: Objection to form.

14 A. Yes. Again, I think I testified
15 earlier that -- that this was communicated to
16 the auditors.

17 Q. Ideally --

18 A. I don't know who exactly did that.
19 I don't recall doing it, but, yeah, it was --
20 it was communicated. And that is why -- I
21 mean, there is a disclosure in the financial
22 statements; right?

23 Q. There is, and that disclosure
24 relates to the last sentence of this document;
25 correct?

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2 A. Yes.

3 Q. Do you recall looking in the
4 document and seeing anything that was disclosed
5 with respect to the sentence above that?

6 A. No.

7 Q. Do you know whether anybody on
8 behalf of Highland ever informed
9 PricewaterhouseCoopers that HCMFA expects that
10 it may be unable to repay amounts due and owing
11 to Highland should they become due?

12 MS. DEITSCH-PEREZ: Object to the
13 form. I think that is the third time.

14 A. I don't recall. Again, as I said,
15 we -- all of this was given to the auditors.

16 Q. Do you know if Highland received
17 anything of value in exchange for its agreement
18 not to demand payment on amounts owed by HCMFA
19 prior to May 31st, 2021?

20 MS. DEITSCH-PEREZ: Object to the
21 form. That is the second time.

22 MS. DANDENEAU: Object to the form.

23 A. I have answered this question.

24 MR. RUKAVINA: Hold on. Object to
25 legal conclusion. Go ahead.

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2 A. I have answered this question
3 before.

4 Q. And the answer was no?

5 A. I'm not aware.

6 Q. Now, this acknowledgment can't
7 possibly apply to the two notes that you signed
8 on behalf of HCMFA because those notes were
9 signed on May 2nd and May 3rd, 2019; is that
10 right?

11 MS. DANDENEAU: Objection to form.

12 A. Unless there is a drafting error.

13 Q. Okay. Are you aware of a drafting
14 error?

15 A. I'm not aware. I didn't -- I wasn't
16 part of -- I didn't sign this note or this
17 acknowledgment. I didn't draft it.

18 Q. But you do see it is dated April 15,
19 2019; right?

20 A. Yes.

21 Q. And this was a document that was
22 actually included by the advisors in a pleading
23 they filed with the Court; right?

24 MR. RUKAVINA: Well, I don't know
25 that so I object to form.

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2 Q. Okay. Let's go to the first page of
3 the document and just confirm that.

4 MR. AIGEN: Mr. Morris, I just note
5 that you already said there was some error
6 with the document that is listed as
7 exhibit --

8 MR. MORRIS: No. No, no, no.

9 MS. DEITSCH-PEREZ: Oh, okay.

10 MR. MORRIS: What I said is that
11 there is a few pages that were mistakenly
12 stapled to the end of the document.

13 MS. DEITSCH-PEREZ: Okay.

14 MR. MORRIS: There is no problem
15 with this document.

16 MS. DEITSCH-PEREZ: And just so
17 we're clear that the document -- the pages
18 that start with defendant's amended answer
19 are not intended to be part of this
20 document?

21 MR. MORRIS: That's correct.

22 MS. DEITSCH-PEREZ: And that the --
23 but it is your representation that the rest
24 of the document is -- is -- is correct
25 because we don't -- we don't have any way

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2 of verifying that, we're just --

3 MR. MORRIS: You do, actually. You
4 could just go to Docket No. 21-3004.

5 MS. DEITSCH-PEREZ: If you want to
6 stop this deposition so we can go and pull
7 that document up, we're happy to do it. So
8 I am just asking you for your
9 representation.

10 MR. MORRIS: Sure. I gave that.

11 MS. DEITSCH-PEREZ: Okay.

12 Q. So do you see that this is a
13 document that was actually filed with the Court
14 by Highland Capital Management Fund Advisors?

15 A. No. I get with the first page in
16 the section. Maybe I'm looking at the wrong
17 thing. It says, Highland Capital Management.

18 Q. Don't worry about it. Don't worry
19 about it.

20 A. Maybe I went back -- okay.

21 MR. MORRIS: All right. Can we put
22 up on the screen Exhibit 2.

23 (Exhibit 2 marked.)

24 MR. MORRIS: I think it is
25 Exhibit 1.

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2 MS. DANDENEAU: I'm sorry, John, did
3 you say Exhibit 2 or Exhibit 1?

4 MR. MORRIS: It is Exhibit 2 in the
5 binders so it is premarked Exhibit 2. And
6 now I'm asking -- right there -- going to
7 Exhibit 1 to the document that was marked
8 as Exhibit 2.

9 MS. DANDENEAU: Got it. In the
10 binder there is no --

11 MS. DEITSCH-PEREZ: There is no
12 Exhibit 1.

13 MR. MORRIS: All right. So look at
14 the one on the screen.

15 Q. Do you see, Mr. Waterhouse, that
16 this is a promissory note dated May 31st, 2017,
17 in the approximate amount of \$30.7 million?

18 A. Yes.

19 Q. And do you see that the maker of the
20 note is NexPoint?

21 A. Yes.

22 Q. And that Highland is the payee; is
23 that right?

24 A. Yes.

25 Q. Okay. And do you see in Paragraph 2

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2 this is an annual installment note?

3 A. Can you scroll down.

4 Q. Sure.

5 MR. MORRIS: Can we scroll down --

6 yeah, there you go.

7 A. Right there, yeah. Yes.

8 MR. MORRIS: And can we scroll down
9 to the signature line.

10 Q. And do you recognize that as
11 Mr. Dondero's signature?

12 A. Yes.

13 Q. And is this the promissory note that
14 we talked about earlier where NexPoint had made
15 certain payments in the aggregate amount of
16 about 6 to \$7 million against principal and
17 interest?

18 A. I don't recall discussing the
19 aggregate principal amounts of 6 to \$7 million,
20 but -- so I don't -- I don't recall that prior
21 discussion with those amounts.

22 Q. All right. Let's take a look.

23 NexPoint always included this promissory note
24 as a liability on its audited financial
25 statements; right?

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2 A. Yes.

3 Q. And NexPoint had its financial
4 statements audited; isn't that correct?

5 A. Yes.

6 Q. And was the process of NexPoint's
7 audit similar to the process you described
8 earlier for Highland and HCMFA?

9 A. Yes, it is similar.

10 Q. Okay.

11 MR. MORRIS: Can we put up
12 NexPoint's audited financials and let
13 everybody know what exhibit number it is,
14 La Asia?

15 MS. CANTY: It is going to be
16 Exhibit 46.

17 (Exhibit 46 marked.)

18 Q. And do you see, sir, that we've put
19 up NexPoint Advisors' consolidated financial
20 statements and supplemental information for the
21 period ending December 31st, 2019?

22 A. Yes.

23 Q. Did you participate in the process
24 whereby these audited financial statements were
25 issued?

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2 A. I didn't participate directly, as
3 I've described before, about the -- the team
4 performing the audit.

5 Q. Do you recall when the audit of
6 NexPoint's financial statements for the period
7 ending December 31st, 2019 was completed?

8 A. Yes.

9 Q. And when do you recall it being
10 completed?

11 A. In January of 2021.

12 Q. Do you know why the 2019 audit
13 report wasn't completed until January of 2021?

14 A. Yes.

15 Q. Why was the NexPoint audit report
16 for the period ending 12/31/19 not completed
17 until January 2021?

18 A. Because we had to deal with working
19 from home from -- with COVID, and on top of all
20 of our daily responsibilities and job duties
21 at -- at providing -- at Highland providing
22 services to NexPoint, we had to do all of this
23 extra work for a bankruptcy that was filed in
24 October of 2019.

25 MR. MORRIS: Can we go to the

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2 balance sheet on page 3? Okay. Stop right
3 there.

4 Q. Do you see under the liabilities
5 section, the last item is note payable to
6 affiliate?

7 A. Yes.

8 Q. And is that the note that we just
9 looked at?

10 MS. DANDENEAU: Objection to form.

11 Q. Withdrawn.

12 Is that the approximately
13 \$30 million note that we just looked at that
14 was dated from 2017?

15 MS. DANDENEAU: Objection to form.

16 A. I believe no.

17 Q. Okay. You're not aware of any other
18 note that was outstanding from NexPoint to
19 Highland as of the end of the year 2019, other
20 than that one \$30 million note; right?

21 A. I don't recall.

22 Q. And as of the end of 2019, the
23 principal amount that was due on the note was
24 approximately \$23 million; right?

25 MS. DEITSCH-PEREZ: Object to the

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2 form.

3 A. Approximately.

4 Q. And does that refresh your
5 recollection that between the time the note was
6 executed and the end of 2019, that NexPoint had
7 paid down approximately \$7 million?

8 A. Yes. If we are just doing the math,
9 yes.

10 Q. Okay. Did NexPoint complete its
11 audit from 2020?

12 A. Sorry, you kind of broke up. Do
13 NexPoint complete?

14 Q. The audit of its financial
15 statements for the period ending December 31st,
16 2020?

17 A. No.

18 Q. No, it's not complete?

19 A. No, it is not complete.

20 Q. Did HCMFA complete its audit for the
21 year ending December 31st, 2020?

22 A. No.

23 MR. MORRIS: Can we go to page 15,
24 please, the paragraph at the bottom.

25 Q. Do you see that NexPoint has

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2 included under notes payable to Highland a
3 reference to the amounts that were outstanding
4 as of the year-end 2019 under the note that we
5 looked at just a moment ago?

6 A. Yes. Are you talking about the
7 second paragraph?

8 Q. I'm actually talking about first
9 paragraph. Do you understand that the first
10 paragraph is a reference to the 2017 note, and
11 the amounts that were -- the principal amount
12 that was outstanding as of the end of 2019?

13 MS. DANDENEAU: Objection to form.
14 John, do you mean the first paragraph of
15 that page?

16 MR. MORRIS: No, the first paragraph
17 under notes payable to Highland.

18 A. Yeah, I see the paragraph, and
19 again, this is what I answered earlier. I
20 believe so, just because I don't -- again, this
21 is a number in a balance sheet, and without
22 matching it up and seeing the detail with the
23 schedule like I kind of talked about for
24 Highland's financial statements, it is a little
25 bit more difficult to tie everything in

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2 perfectly together.

3 Q. Okay. But you're not aware of any
4 note that was outstanding at the end of 2019
5 from NexPoint to Highland other than whatever
6 principal was still due and owing under the
7 \$30 million note issued in 2017; correct?

8 A. Well, it -- I don't -- there is
9 reference in the second paragraph. I don't --
10 I don't -- I don't recall what that is
11 referring to, so I don't -- I don't know.

12 Q. Well, if you listen carefully to my
13 question, right, I'm asking about notes that
14 were outstanding at the end of 2019, and if we
15 look at the paragraph you just referred to, it
16 says that during the year there were new notes
17 issued totaling \$1.5 million, but by the end of
18 the year, no principal or interest was
19 outstanding on the notes.

20 Do you see that?

21 A. Oh, I do, yes.

22 Q. So does that refresh your
23 recollection that there were no notes
24 outstanding from NexPoint to Highland other
25 than the principal remaining under the original

1 WATERHOUSE - 10-19-21

2 \$30 million 2017 note that we looked at a
3 moment ago?

4 A. Well, we're at the bottom of the
5 page. Is there anything on page 16?

6 Q. That is a fair question, sure. That
7 is it.

8 A. Okay. So it appears that that is
9 the only note that is detailed in the notes in
10 the financial statement.

11 Q. And you don't have any memory of any
12 other note other than the 2017 note, right,
13 being outstanding as of the end of the year?

14 A. I deal with thousands of
15 transactions every year. I don't really have a
16 very specific memory for what exactly was
17 outstanding.

18 MR. MORRIS: Why don't we take a
19 break now. We've been going for a little
20 while. It's 3:26. Let's come back at
21 3:40.

22 VIDEOGRAPHER: We're going off the
23 record at 3:26 p.m.

24 (Recess taken 3:26 p.m. to 3:39 p.m.)

25 VIDEOGRAPHER: We are going back on

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2 the record at 3:39 p.m.

3 Q. All right. Mr. Waterhouse, we -- I
4 don't think we have a lot more here.

5 To the best of your knowledge and
6 recollection, were all affiliate loans and all
7 loans made to Mr. Dondero recorded on
8 Highland's books and records as assets of
9 Highland?

10 MS. DANDENEAU: Object to the form,
11 asked and answered.

12 A. To my knowledge, yes.

13 Q. Okay. Can you recall any loan to
14 any affiliate or Mr. Dondero that was not
15 recorded on Highland's books and records as an
16 asset?

17 A. Like during my time as CFO? I don't
18 recall.

19 Q. How about after the time that you
20 were CFO? Did you recall that there was a loan
21 by Highland to an affiliate or to Mr. Dondero
22 that hadn't been previously recorded on
23 Highland's books as an asset?

24 MS. DANDENEAU: Objection to form.

25 A. I guess I don't understand the

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2 question. I left Highland as of -- I'm not
3 aware of -- I left Highland in February --
4 probably the last day of February of 2021.

5 Q. Okay.

6 A. I'm not -- I'm not aware of any --
7 I'm not aware of anything past that date.

8 Q. Okay. While you were the CFO at
9 Highland, did Highland prepare in the ordinary
10 course of business a document that reported
11 operating results on a monthly basis?

12 A. Yes.

13 Q. And are you generally familiar with
14 the monthly operating reports?

15 A. Yeah. You are referring to the
16 reports that we filed to the Court every month?

17 Q. I apologize, I'm not. I'm taking
18 you back to the pre-petition period. There was
19 a report that I have seen that I'm going to
20 show you, but I'm just asking for your
21 knowledge.

22 MR. MORRIS: Let's put it up on the
23 screen, Exhibit 39.

24 (Exhibit 39 marked.)

25 Q. Do you see this is a document that

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2 is called operating results?

3 A. Yeah, that's the title of it.

4 Q. Okay. And was a report of operating
5 results prepared by Highland on a monthly basis
6 during the time that you served as CFO?

7 A. No.

8 Q. Are you familiar with a document of
9 this type? And we can certainly look at the
10 next page or two to refresh your recollection.

11 A. I'm just looking at the title. I
12 don't really -- again, as I discussed before, I
13 don't have any records or documents or emails
14 or appointments or anything that I was able to
15 use prior to -- prior to this deposition, so
16 I'm doing the best I can.

17 Q. Okay. You don't need to apologize.
18 I'm just asking you if you are familiar with
19 the document called Operating Results that was
20 prepared on a monthly basis at Highland?

21 MS. DEITSCH-PEREZ: Object to the
22 form.

23 Q. If you're not, you're not.

24 A. I don't believe this was prepared on
25 a monthly basis.

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2 Q. Okay. Do you see that this one
3 is -- is dated February 2018?

4 A. Yes.

5 Q. Do you have -- do you believe --
6 have you ever seen a document that was
7 purporting to report operating results for
8 Highland?

9 MS. DANDENEAU: Objection to form.

10 A. Yes.

11 Q. Okay. And when you say that you
12 don't believe it was produced on a monthly
13 basis, was it produced on any periodic bases to
14 the best of your recollection?

15 A. I believe it was -- it was prepared
16 on an annual basis.

17 Q. Okay.

18 MR. MORRIS: Can we look at the next
19 page.

20 Q. Do you see that there is a statement
21 here called: Significant items impacting
22 HCMLP's balance sheet?

23 And it is dated February 2018.

24 A. Yes.

25 Q. Do you recall that there was a

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2 report that Highland prepared that identified
3 significant items impacting the balance sheet?

4 A. A report that was prepared.

5 Q. Let me ask a better question: Did
6 Highland prepare reports to the best of your
7 recollection that identified significant items
8 that impacted its balance sheet?

9 A. Well, so Highland prepared a -- a
10 monthly close package. And maybe I'm
11 getting -- and -- and maybe change names at one
12 time or maybe I'm just -- again, just
13 misremembering -- but in that, yes, there is a
14 page that would detail just changes in -- you
15 know, just changes month over month on the
16 balance sheet.

17 Q. Okay. And maybe it is my fault.

18 Maybe I didn't know the proper name for it.
19 But let's use the phrase "monthly close
20 package."

21 Did Highland prepare a monthly close
22 package in the ordinary course of business
23 during the time that you served as CFO?

24 MS. DANDENEAU: Objection to form.

25 A. Yes.

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2 Q. And did the monthly close package
3 that Highland prepared include information
4 concerning significant items that impacted
5 Highland's balance sheet?

6 A. Yes, it had a page like that is --
7 that is on the screen that detailed items
8 like -- of that nature.

9 Q. And do you know who -- was there
10 anybody at Highland who was responsible for
11 overseeing the preparation of the monthly
12 reporting package?

13 A. That would have been -- again, it
14 varies over time during my tenure as CFO.
15 It -- it varied over -- over time, but -- but
16 typically a -- a corporate accounting manager.

17 Q. And who were the corporate
18 accounting managers during your tenure as CFO?

19 A. It would have been Dave Klos and
20 Kristin Hendrix.

21 Q. And did the corporate accounting
22 manager deliver to you drafts of the monthly
23 close package before it was finalized?

24 A. Sometimes.

25 Q. Was that the practice even if there

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2 were exceptions to the practice?

3 A. The practice meaning that they
4 sometimes lured them to me?

5 Q. That that was the expectation even
6 if circumstances prevented that from happening
7 from time to time.

8 MS. DEITSCH-PEREZ: Object to the
9 form.

10 A. I -- I would say it started out that
11 way but over the years it -- it was not
12 enforced.

13 Q. Okay. So you were -- you reviewed
14 and approved monthly -- monthly reporting
15 packages for a certain period of time and then
16 over time you stopped doing that.

17 Do I have that right?

18 MS. DANDENEAU: Objection to form.

19 A. Yes, I mean, if you're talking about
20 a formal meeting where we sit down and go
21 through and approve it. I would say that was
22 standard practice a decade -- you know, early
23 on. And as time went on that -- that -- that
24 practice wasn't followed.

25 Q. Okay.

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2 A. And, quite frankly, I don't even
3 know if these were -- these were sent to me
4 even in any capacity.

5 Q. What was the purpose of preparing
6 the monthly reporting package -- withdrawn.

7 What was the purpose of preparing
8 the monthly close package?

9 MS. DEITSCH-PEREZ: Object to the
10 form.

11 A. The -- the original purpose was so
12 that it would just -- it would be a report that
13 was reviewed monthly with senior management.

14 Q. Who was included in the idea of
15 senior management?

16 A. You know, I think originally when
17 this was conceived that would have been like
18 Jim Dondero and Mark Okada.

19 Q. Were monthly reporting -- withdrawn.

20 Were monthly close packages prepared
21 to the best of your knowledge until the time
22 you left Highland?

23 A. To my knowledge -- I don't know,
24 actually. I mean, to my knowledge, I believe
25 it was being -- that was still being done. I

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2 don't know because, again, I wasn't reviewing
3 them. I hadn't reviewed a close package for --
4 for a long time. But I believe the standard
5 practice that was still being carried out.

6 Q. Did you ever have any discussions
7 with the debtor's independent board concerning
8 any promissory notes that were issued by any of
9 the affiliates or Mr. Dondero?

10 A. I can't -- I can't -- I can't recall
11 specifically.

12 Q. Did you speak with the independent
13 board from time to time?

14 A. Yes, from -- from -- from time to
15 time I had discussions with the independent
16 board members, you know, either -- either, you
17 know, by themselves or wholly, you know, as --
18 as a -- as a combined work.

19 Q. Okay. Before we talk about
20 Mr. Seery, do you recall ever having a
21 conversation with Mr. Nelms or Mr. Dubel
22 concerning any promissory note that was
23 rendered by one of the affiliates or
24 Mr. Dondero to Highland?

25 A. I don't recall any conversations

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2 specifically.

3 Q. Do you know if the topic was ever
4 discussed, even if you don't remember it
5 specifically?

6 MS. DANDENEAU: Objection to form.

7 A. It -- it -- it may have. I don't
8 know. I don't recall.

9 Q. Do you recall ever discussing any
10 promissory note issued by any of the affiliates
11 or Mr. Dondero with James Seery?

12 A. I don't -- I don't recall
13 specifically.

14 Q. Do you recall generally ever
15 discussing the topic of promissory notes issued
16 by any of the affiliates or Mr. Dondero to
17 Highland with Mr. Seery?

18 A. Nothing -- nothing is really jumping
19 out at me.

20 Q. Do you recall if you ever told
21 Mr. Seery that any of the affiliates or
22 Mr. Dondero didn't have an obligation to pay
23 all amounts due and owing under their notes?

24 A. I don't recall having that
25 conversation.

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2 Q. Did you ever tell Mr. Seery that you
3 had any reason to believe that the amounts
4 reflected in the notes issued by the affiliates
5 and Mr. Dondero were invalid for any reason?

6 A. I don't -- I don't recall.

7 Q. Did you tell Mr. Dondero -- did you
8 tell Mr. Seery that you thought the promissory
9 notes issued by the advisors and Mr. Dondero
10 that were outstanding as of the petition date
11 were assets of the estate?

12 A. I don't recall having a specific
13 conversation about those -- you know, those
14 notes outstanding as -- as of the petition date
15 being assets on the estate. I mean, we put
16 together -- you know, they're in the books and
17 records of the financial statements. I don't
18 recall having a specific conversation.

19 Q. Did you ever prepare any documents
20 that were delivered to Mr. Seery that concerned
21 the promissory notes issued by any of the
22 affiliates or Mr. Dondero?

23 MS. DANDENEAU: Objection to form.

24 A. Did I produce any that concerned --
25 you mean did I just -- did I give Mr. Seery

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2 anything that -- that said I have concerns over
3 these notes?

4 Q. No. Let me try again. Maybe it was
5 my question.

6 Did you ever give Mr. Seery any
7 information concerning any of the notes that
8 were issued by any of the affiliates or
9 Mr. Dondero?

10 MS. DANDENEAU: Objection to form.

11 A. I don't recall if I did or not. I
12 don't -- I don't remember. I mean, you have my
13 emails. You may have asked. Again, I don't --
14 I don't know.

15 MR. MORRIS: Can we put up the
16 document that has been premarked as Exhibit
17 39?

18 MS. DANDENEAU: John, that is this
19 document, isn't it?

20 MR. MORRIS: Oh, yeah, it might be,
21 as a matter of fact. Let's go to Number
22 40.

23 (Exhibit 40 marked.)

24 Q. During the bankruptcy,
25 Mr. Waterhouse, did you prepare documents that

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2 were filed with the bankruptcy court?

3 A. I didn't -- I didn't prepare them
4 personally.

5 Q. Did people prepare them under your
6 direction?

7 A. Yes. There were members of the team
8 that prepared them, and they worked in -- you
9 know, there were members of DSI that were
10 involved in the process as well.

11 Q. To the best of your knowledge, did
12 DSI rely on the employees of Highland for the
13 information that they used to prepare the
14 bankruptcy filings?

15 A. Yes. The books and records were
16 with the Highland personnel.

17 Q. Okay. And do you see on the screen
18 here, there is a document that we have marked
19 as Exhibit 40 that is -- that is titled Summary
20 of Assets and Liabilities?

21 A. Uh-huh.

22 Q. Okay. And do you recall reviewing
23 any summary of assets and liabilities before it
24 was filed with the bankruptcy court?

25 A. Yes, I recall reviewing this at a

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2 high level.

3 Q. And did you believe that it was
4 accurate at the time it was filed?

5 A. I didn't have any other reason to
6 believe otherwise.

7 Q. Okay. Do you see that the total
8 value of all properties listed in Part 1 is
9 approximately \$410 million?

10 MS. DEITSCH-PEREZ: Objection to
11 form.

12 A. Yes, it is in 1c.

13 Q. Yes.

14 A. Yes, I see that.

15 Q. Okay. If we go to the second page,
16 now I think I may just have excerpts here, just
17 so everybody is clear, but if we scroll down to
18 the second page, you will see that there is
19 a -- a little further. There you go. You will
20 see there is a reference to Item 71, notes
21 receivable.

22 Do you see that?

23 A. I do.

24 Q. And that was a reference to the
25 notes receivable from the affiliates and

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2 Mr. Dondero, among others; is that right?

3 MS. DANDENEAU: Objection to form.

4 A. Yes. The affiliate notes and the
5 Dondero notes were in this amount, but they
6 weren't -- again, like you said, and among
7 others.

8 Q. Okay. We will look at the
9 specificity because I'm not playing gaming
10 here, but do you know if the \$150 million of
11 notes receivable was included within the
12 \$410 million of total value of the debtor's
13 assets?

14 MS. DANDENEAU: Objection to form.

15 A. I -- I -- I believe so.

16 Q. Right. And so is it fair to say
17 that as of the date this document was prepared,
18 the notes receivable were more than one-third
19 of the value of the debtor's assets?

20 MS. DEITSCH-PEREZ: Object to the
21 form.

22 MS. DANDENEAU: Object to the form.

23 A. Again, if you are just taking the
24 math, 150 divided by whatever the \$400 million
25 number is above, then yes, you get there.

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2 Q. Okay.

3 A. You know, but as of the time of this
4 filing, that is what was put in this filing,
5 right, but, you know, I mean, numbers --
6 numbers change, facts and circumstances change.

7 Q. But as the CFO of Highland, the
8 debtor in bankruptcy, did you believe that this
9 number accurately reflected the total amount
10 due under the notes receivable?

11 A. That is what we had in our books and
12 records.

13 Q. Okay. And did you believe as the
14 CFO that the books and records accurately
15 reported the then value of the debtor's assets?

16 MS. DANDENEAU: Objection to form.

17 A. We didn't -- as part of this filing,
18 there was no fair value measurement or
19 anything. These were just accounting entries
20 for the promissory notes. There is no analysis
21 for impairment or fair market value adjustments
22 or anything of that nature. This is purely
23 taking numbers and putting them in our form.

24 Q. Did you do any impairment analysis
25 at any time while you were employed by

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2 Highland?

3 A. Yes, we did do impairment analysis
4 on -- on assets.

5 Q. Okay. Did you ever do an impairment
6 analysis on any of the promissory notes that
7 were given to Highland by any of the affiliates
8 or Mr. Dondero?

9 A. Not that I recall.

10 Q. Under what circumstances do you
11 prepare impairment analyses?

12 A. As -- as -- if you're preparing
13 financials in accordance with GAAP, generally
14 accepted accounting principles, if you're
15 preparing full GAAP financials, you should be
16 preparing -- you should be undergoing on a
17 periodic basis any fair market value
18 adjustments to assets.

19 As I was instructed at the time of
20 the petition date, we weren't producing GAAP
21 financials. So this wasn't something I was
22 worried about nor concerned about.

23 Q. Okay. Were NexPoint and HCMFA and
24 Highland's audited financial statements
25 prepared in accordance with GAAP?

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2 A. The audited financials -- yes,
3 audited financial statements are prepared in
4 accordance with GAAP.

5 Q. Do you recall whether any of
6 Highland or HCMFA or NexPoint ever made a fair
7 market value adjustment to any of the notes
8 issued by any of the affiliates or Mr. Dondero
9 to Highland?

10 A. I do not recall that happening, but
11 the -- it is because under -- under GAAP,
12 the -- the treatment of liabilities is
13 different than assets.

14 Q. Okay. So then let's just focus on
15 Highland's audited financial statements.

16 The last audited financial
17 statements were for the period ending December
18 31st, 2018; correct?

19 A. That is my understanding.

20 Q. And you had -- you had an obligation
21 to disclose anything to PricewaterhouseCoopers
22 concerning any subsequent events between the
23 end of 2018 and June 3rd, 2019; correct?

24 MS. DANDENEAU: Objection to form.

25 MS. DEITSCH-PEREZ: Form.

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2 A. Correct.

3 Q. Okay. To the best of your
4 knowledge, as Highland's CFO, did Highland ever
5 make any fair market value adjustments to any
6 of the promissory notes that were carried on
7 its balance sheet and that were issued by any
8 of the affiliates or Mr. Dondero?

9 A. I think I answered that question
10 earlier. I don't recall doing that for any of
11 the -- those -- those notes. So it would have
12 included the audit for the -- for the 2018
13 period.

14 Q. Okay.

15 MR. MORRIS: Can we go to the next
16 page.

17 Q. Do you see this is a note a list of
18 notes receivable? Do you see that?

19 A. Yes, I do.

20 Q. And do you see that this ties into
21 the page that we were just looking?

22 A. I'm sorry, can we go back to the
23 prior page? I mean, it was at 150,331,222. It
24 was on the prior page. Next page. Yes, it
25 agrees.

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2 Q. Okay. So now let's look at that
3 schedule. So this was the face amount of all
4 of the promissory notes that Highland held at
5 the time this document was filed with the
6 bankruptcy court; right?

7 A. Yes.

8 Q. There is a footnote there that says,
9 doubtful or uncollectible accounts are
10 evaluated at year-end.

11 Do you see that?

12 A. I do.

13 Q. Okay. And is it fair to say that as
14 of the year-end 2018, the year before this,
15 that to the extent any of these notes were
16 outstanding at that time, they weren't deemed
17 to be doubtful or uncollectible?

18 A. Yeah. For the 2018 audit, there
19 weren't any -- there weren't any adjustments to
20 fair value.

21 Q. Okay. And during the bankruptcy, do
22 you recall that Highland subsequently reserved
23 for the Hunter Mountain Investment Trust note?

24 A. Yes.

25 Q. Why did Highland -- were you

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2 involved in the decision to reserve the Hunter
3 Mountain Investment Trust note?

4 A. I was not.

5 Q. Do you know why Highland decided to
6 reserve for the Hunter Mountain Investment
7 Trust note?

8 A. I don't know yet decision was made.
9 I believe it was made by someone at DSI.

10 Q. Okay. I'm just asking if you know
11 why.

12 Did you ever ask anyone why they
13 reserved for that particular note?

14 A. I don't recall.

15 Q. Do you know whether the debtor
16 reserved for any other note on this list during
17 the bankruptcy?

18 A. Again, I don't recall. I wasn't
19 part of any process of -- again, like any fair
20 value adjustments or anything to that degree.
21 Like I said, a lot of that was done by DSI and
22 it was kind of out of our court.

23 Q. Okay. Do you know if any note
24 receivable on this list was ever deemed by the
25 debtor to be doubtful or uncollectible?

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2 A. I don't -- I don't have a
3 recollection of every filing, so I don't know.

4 Q. Did you ever have a discussion with
5 anybody at any time about whether any of the
6 notes receivable on this list should be deemed
7 to be doubtful or uncollectible?

8 A. No. As I previously stated, we were
9 told we didn't have to keep GAAP financials.
10 We weren't having -- you know, there is no
11 underlying audits being performed, so I mean,
12 it wasn't something I worried about.

13 MR. MORRIS: I move to strike.

14 Q. Did you ever have a conversation
15 with anybody about any of the notes receivable
16 and whether they should be deemed to be
17 doubtful or uncollectible? Did you have the
18 conversation, yes or no?

19 MS. DANDENEAU: Objection to form.

20 A. I don't recall.

21 Q. Do you recall ever telling anybody
22 that you believed any of the notes receivable
23 on this list should be doubtful -- should be
24 deemed to be doubtful or uncollectible?

25 MS. DANDENEAU: Objection to form.

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2 A. I don't recall. I mean, it may have
3 happened, you know, again, when we initially
4 getting DSI up to speed and going through
5 financials, it may have happened, but I don't
6 recall specifically.

7 Q. While you were the CFO of Highland
8 during the time that the company was in
9 bankruptcy, did you have any reason to believe
10 that any of the notes receivable on this list
11 other than Hunter Mountain Investment Trust
12 should have been characterized as doubtful or
13 uncollectible?

14 MS. DANDENEAU: Objection to form.

15 MS. DEITSCH-PEREZ: Form.

16 A. I didn't know. I didn't form an
17 opinion. Bankruptcy was new to me. It still
18 is new to me, even after going through this.
19 So I really didn't know what to expect nor
20 really -- you know, I didn't know.

21 MR. MORRIS: I move to strike.

22 Q. During the period of Highland's
23 bankruptcy when you were serving as CFO, did
24 you have any reason to believe any of the notes
25 on this list were doubtful or uncollectible?

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2 MS. DEITSCH-PEREZ: This is like the
3 fifth time you've asked it. Object to the
4 form.

5 MR. MORRIS: I'm moving to strike,
6 if you haven't noticed, because he's not
7 answering the question.

8 MS. DEITSCH-PEREZ: He was answering
9 the question, you just didn't like it, like
10 the answer.

11 MR. MORRIS: Good Lord.

12 Q. Go ahead, Mr. Waterhouse.

13 A. Again, I don't -- we brought up a
14 myriad of issues at the start of the bankruptcy
15 case. I don't recall if this was one of them,
16 but, again, there are a lot of things we
17 couldn't change. Even, you know, I was told
18 status quo, blah, blah, blah, right, there is a
19 stay, you can't -- you know, I don't recall
20 specifically, but that doesn't mean it didn't
21 happen.

22 MR. MORRIS: I move to strike.

23 Q. During the time that Highland was in
24 bankruptcy and you served as CFO, did you have
25 any reason to believe that any of the notes

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2 receivable on this list were doubtful or
3 uncollectible?

4 MS. DEITSCH-PEREZ: Object to the
5 form.

6 A. Potentially.

7 Q. Did you ever tell anybody that?

8 A. As I just stated like five times,
9 yes, we -- at the beginning after filing and we
10 were getting DSI and others up to speed, you
11 know, we had a myriad of discussions of a lot
12 of things and this was likely one of them. I
13 don't -- but I don't recall specifically we
14 talked --

15 Q. I don't want to know -- I don't want
16 to know what was --

17 MS. DEITSCH-PEREZ: Wait, wait.

18 Excuse me. Mr. Morris, you did not let him
19 finish his answer.

20 A. I spoke -- we had -- we were
21 bringing Fred Karesa and Brad Sharp (phonetic)
22 up to speed on all of these items, contracts,
23 and investments and going through -- we had
24 hours and hours and hours of discussion. And
25 then not only do I have to repeat this not

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2 once, twice, three, four times with -- you
3 know, I mean, we -- I don't -- I don't remember
4 the sum culmination of all these discussions.
5 They all kind of blend together.

6 MR. MORRIS: Okay. I move to strike
7 and I will try one more time.

8 Q. Did you ever tell anybody at DSI
9 that you believed any of the notes receivable
10 on this list were doubtful or uncollectible?

11 MS. DANDENEAU: Object to form.

12 A. Potentially.

13 Q. Potentially you told them or
14 potentially they were doubtful or
15 uncollectible?

16 A. Potentially I told them that we
17 needed to look at the value of these -- of
18 these assets.

19 Q. Okay. Did you -- okay. It is
20 potential that you told them and it is
21 potentially that you didn't; right?

22 MS. DANDENEAU: Objection to form.

23 A. I've gone through that. I don't
24 recall specifically.

25 Q. So you should just -- I don't want

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2 to tell what you to do. Do you have --

3 MS. DANDENEAU: Good.

4 Q. Other than -- other than telling
5 them that they should look at the values, do
6 you have any recollection whatsoever of ever
7 having told anybody at DSI that any of the
8 notes receivable on this page were doubtful or
9 uncollectible?

10 MS. DEITSCH-PEREZ: Object to the
11 form.

12 MS. DANDENEAU: Objection.

13 A. I recall having general discussions
14 about everything on our balance sheet which
15 would have included these -- these notes
16 receivable.

17 Q. Okay.

18 A. I don't recall specifically where
19 those discussions delved into.

20 Q. Do you recall any discussion at all
21 on the topic of whether any of these notes on
22 this list were doubtful or uncollectible?

23 MR. AIGEN: Mr. Morris, how on earth
24 is that question different from the
25 question that you just asked for the last

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2 five times? I mean, really I thought you
3 were -- (overspeak.)

4 MR. MORRIS: Because he never
5 answered it.

6 MS. DEITSCH-PEREZ: Are you
7 listening to him?

8 MR. MORRIS: You know --

9 MS. DEITSCH-PEREZ: He basically
10 said that he had a conversation with DSI
11 that went over all of this stuff and that
12 conversation could have included the notes
13 but he doesn't recall specifically.

14 What more do you want him -- to ask
15 of him?

16 MR. MORRIS: I want him -- I would
17 love him to say -- I would like him to
18 testify to the truth, and that is he has no
19 recollection.

20 MS. DEITSCH-PEREZ: Well, the truth
21 as you would like to see it, but -- but he
22 is testifying truthfully. And I -- and, by
23 the way, I move to strike that comment --

24 MR. MORRIS: Okay.

25 MS. DEITSCH-PEREZ: -- because it

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2 suggests that he has not testified
3 truthfully.

4 MR. MORRIS: I will ask my question
5 again. And if at any time you want to
6 direct him not to answer, that is your
7 prerogative.

8 Q. Mr. Waterhouse, do you have any
9 recollection at all of ever telling anybody
10 from DSI that any of these notes were doubtful
11 or uncollectible?

12 MS. DANDENEAU: Object to form.

13 A. I don't remember specifically.

14 Q. Do you remember generally that
15 specific topic?

16 A. We generally talked about assets,
17 values. If -- we had discussions of that and
18 collectability in nature. I mean, of Highland,
19 the funds, the CLOs, the entire complex. We
20 had discussions like that, which is, you know,
21 as you look at a billion dollar consolidated
22 balance sheet.

23 So I generally remember -- this is
24 billions of dollars, including these assets --
25 having discussions of this -- of this type.

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2 Q. Do you believe that an affiliate
3 loan on this list was doubtful or
4 uncollectible? Would you have told that to
5 DSI?

6 MS. DANDENEAU: Objection to form.

7 MS. DEITSCH-PEREZ: Object to form.

8 A. If we had, like -- again, if we --
9 if -- if we weren't preparing financial
10 statements in accordance with GAAP, and -- you
11 know, if DSI at that point -- they were --
12 again, I was new to bankruptcy.

13 The CRO is -- we are delegating
14 everything to the CRO. All the decisionmaking.
15 Remember -- remember when you and I went into
16 Delaware Court and we were saying DSI basically
17 does everything, remember this, Mr. Morris?

18 You were my counsel at the time, and
19 basically we're running everything through DSI.
20 That was what this was like in the early part.

21 Everything was communicated through
22 DSI. So DSI says this. DSI says that. That
23 is what we're doing, and we're pointing out
24 things to them.

25 Now, they decide what direction this

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2 goes.

3 Q. Did you point out that any of
4 these --

5 A. I don't recall specifically.

6 Q. Okay. At any time that you served
7 as Highland's CFO, did you ever point out to
8 DSI that any of these loans were doubtful or
9 uncollectible?

10 MS. DEITSCH-PEREZ: Object to the
11 form.

12 MS. DANDENEAU: Objection.

13 A. If you're asking me if I had a
14 conversation with DSI, if any of these loans
15 were doubtful or uncollectible, I don't recall
16 specifically.

17 Q. Do you recall that the debtor filed
18 on the docket monthly operating reports?

19 A. Yes.

20 Q. You prepared those personally,
21 didn't you?

22 MS. DEITSCH-PEREZ: Objection to
23 form.

24 A. I didn't personally prepare them,
25 the team did with DSI.

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2 Q. But you signed them; correct?

3 A. My signature is on the MORs.

4 Q. And you signed them as the preparer
5 of the document; correct?

6 A. Yes, I did this pursuant to DSI's
7 instructions.

8 Q. Okay. You wouldn't have signed the
9 document if you didn't believe it to be
10 accurate; correct?

11 A. If I had reason to believe it
12 wasn't, presumably I wouldn't have signed it.

13 Q. Okay. And do you have any reason to
14 believe right now that any monthly operating
15 report that has your signature on it was
16 inaccurate in any way?

17 MS. DEITSCH-PEREZ: Object to the
18 form.

19 A. My understanding of the monthly
20 operating reports is we were filing them in
21 accordance with the standards set by the Court.
22 It wasn't -- you know, again, I don't -- you
23 know, it wasn't GAAP. It wasn't these other
24 standards, so I testified I didn't have
25 experience in this. The CRO was running the

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2 show. I followed their advice.

3 Q. But you assured yourself that
4 everything in the report was accurate before
5 you signed them; correct?

6 MS. DANDENEAU: Objection to form.

7 A. I trusted the guidance from the CRO
8 and their team and their experience and their
9 guidance for doing this for many, many, many
10 years to -- to -- to categorize and put things
11 in ways on the form.

12 You know, my team had -- had not
13 filled out these forms before and needed all of
14 this guidance. I'm not an expert in this. I
15 have oversight of it. I signed the form. DSI
16 told me to.

17 Q. And you and your team are the source
18 of the information that DSI used to create the
19 reports; correct?

20 MS. DANDENEAU: Objection to form.

21 A. The books and records reside with
22 the -- with -- with the corporate accounting
23 team.

24 Q. Okay. And the corporate accounting
25 team was the corporate accounting team that was

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2 under your direction; correct?

3 A. Yes.

4 Q. So -- so your team was responsible
5 for maintaining Highland's books and records;
6 correct?

7 A. I'm sorry, my team was responsible?

8 Q. Correct.

9 A. Yes. They -- they -- they were
10 the -- the -- the general ledger of Highland,
11 that responsibility was with the corporate
12 accounting team.

13 Q. The corporate accounting group
14 reported to you; correct?

15 A. Yes.

16 MR. MORRIS: Can we put up 41,
17 please.

18 (Exhibit 41 marked.)

19 Q. All right. You will see that this
20 is a report that is dated January 31st, 2020,
21 but it is for the month ending December 2019.

22 Do you see that?

23 A. I do.

24 Q. And you signed this report in your
25 capacity as the chief financial officer of

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2 Highland; correct?

3 A. Yes.

4 Q. And you're the preparer -- you're
5 identified as the preparer of the report;
6 correct?

7 A. That is correct.

8 Q. Do you recall participating in the
9 preparation of monthly operating reports?

10 A. As I testified earlier, it was put
11 together, you know, with the team. The team
12 worked with DSI to put these monthly operating
13 reports together. We had no experience at this
14 time of the monthly operating reports or things
15 of this nature.

16 MR. MORRIS: Can you turn to the
17 next page, please.

18 Q. Do you see a line item under assets
19 due from affiliates?

20 A. Yes, I do.

21 Q. Okay. And to the best of your
22 knowledge and understanding, as the person who
23 is identified as the preparer of this report,
24 does that line item include the affiliate loans
25 that we've been talking about?

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2 A. Again, I would have to see, just
3 like we did with the financial statements of
4 Highland and NexPoint, I would have to see a
5 detailed build, but, you know, if you look at
6 the other line items, you know, the only other
7 place it could be would be in -- in other
8 assets.

9 Q. Okay. And as a matter of
10 arithmetic, is it fair to say that is the value
11 of the assets due from affiliates was more than
12 25 percent of the value of Highland's total
13 assets as of 12/31/2019?

14 MS. DANDENEAU: Objection to form.

15 A. I'm really not doing the mental math
16 right now, so I've been going at this depo for
17 hours, so I'm really not -- you know --

18 Q. All right. No problem.

19 A. -- these are millions of dollars.

20 Q. Let's look at the Footnote 1,
21 please. Do you see there is a reference to the
22 Hunter Mountain note?

23 A. Yes, I see that in Footnote 1.

24 Q. Okay. And that's the reserve that
25 was taken against that note?

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2 A. Yes, that is what this indicates.

3 Q. Okay. And were you aware that the
4 reserve was being taken on that it was?

5 A. I was -- I was aware, yeah, at some
6 point, yes.

7 Q. Okay. And are you aware of any
8 reserve being taken with respect to any other
9 note that was issued in favor of Highland?

10 A. Again, as I testified, we didn't go
11 through an analysis on -- on -- on the other
12 notes.

13 Q. Can we turn --

14 A. I believe -- I believe it says that
15 in Footnote 1, fair value has not been
16 determined with respect to any of the notes.

17 So this footnote -- footnotes, look,
18 there has been no determination.

19 Q. Okay. The determination was made in
20 the audited financial statements just six
21 months earlier; right? We saw that earlier?

22 A. That was as of 12/31/18. I mean,
23 things -- circumstances -- there's a bank --
24 circumstances change, things change -- things
25 change over time, you know, facts and

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2 circumstances change. Again, you have to do an
3 analysis.

4 Q. Okay. And you do recall that in
5 Highland's 2018 financial statement, all of the
6 notes issued by affiliates and Mr. Dondero that
7 were due at year-end had a fair value equal to
8 the carrying value; correct? We looked at
9 that?

10 A. Yes. That was in the -- in the
11 disclosure for the -- for the affiliate notes,
12 yes.

13 Q. And -- and you were obligated to
14 share with PwC any subsequent events between
15 the end of 2018 and the date that you signed
16 your management representation letter on June
17 3rd, 2019; correct?

18 MS. DEITSCH-PEREZ: Object to the
19 form.

20 A. Yes. I -- I -- I signed the
21 management, you know, my signature is in the
22 management representation letter -- I hope I'm
23 answering your question -- that is dated in
24 June with the representations made in that
25 management representation letter.

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2 Q. Okay. And there was nothing that
3 caused PricewaterhouseCoopers to include in
4 subsequent events any adjustment to the
5 conclusion that the fair value of the affiliate
6 notes and the notes issued by Mr. Dondero
7 equaled the carrying value; correct?

8 MS. DANDENEAU: Objection to the
9 form.

10 A. That is correct. That is what was
11 in the -- in the -- in the footnotes.

12 Q. Okay. So are you aware of anything
13 that occurred between June 3rd, 2019 and
14 December 31st, 2019 that would have caused the
15 fair value of the notes to differ from the
16 carrying value?

17 A. Yeah. Highland filed for
18 bankruptcy, things changed -- I mean, there was
19 a bankruptcy filed in October of -- of -- of
20 2019, right, the petition date that we've
21 described earlier.

22 I mean, I had a -- I guess looking
23 back naively, I thought we were going to get an
24 audit from PwC for year-ended 2019, and when we
25 had discussions with PwC, they were like, are

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2 you crazy, we're not auditing this. Values
3 change, all these things change, bankruptcy
4 changes the entire scenario. I mean -- and
5 they're like, we're not -- we're not touching
6 this.

9 I mean, it is -- you know, and --
10 you know, and we weren't preparing GAAP
11 financial statements.

18 Q. Okay. Highland wasn't the obligor
19 under any of the notes that we're talking
20 about; correct?

21 A. NO.

22 O. So --

23 A. That's right.

24 Q. So can you identify any fact that
25 would cause the fair value to deviate from the

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2 carrying value during the seven-month period
3 between June 3rd and the end of the year, 2019?

4 MS. DANDENEAU: Objection to form.

5 A. No. I mean, I'm putting myself back
6 at that time, right. Hindsight is 2020, but we
7 didn't do an analysis, but we would have done a
8 fulsome analysis and looked at all of the facts
9 and circumstances at the time, but asset values
10 change. You know, there could have been a
11 market crash in hindsight in 2020, which --
12 which affected entities' abilities.

13 There could have been all of these
14 things, right, that -- that happen. It is --
15 it is easy to look back in hindsight, but when
16 you are looking at this in -- in realtime, the
17 analysis is different, and again, we didn't do
18 an analysis.

19 Q. Okay. You didn't do an analysis.

20 Do I have that right?

21 A. I don't -- I don't recall doing one
22 or maybe -- you know, I don't recall doing one.

23 MR. MORRIS: Okay. I'm going to
24 take a break. I may be done, so the time
25 now is -- is 4:30 your time. Let's just

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2 take a short break until 4:40 your time.

3 MS. DANDENEAU: Okay.

4 VIDEOGRAPHER: We're going off the
5 record, 4:31 p.m.

6 (Recess taken 4:31 p.m. to 4:43 p.m.)

7 VIDEOGRAPHER: We are back on the
8 record at 4:43 p.m.

9 MR. MORRIS: I have no further
10 questions.

11 MR. RUKAVINA: Okay.

12 Mr. Waterhouse, I will go next.

13 EXAMINATION

14 BY MR. RUKAVINA:

15 Q. Sir, my name is Davor Rukavina. I'm
16 the lawyer for --

17 MR. MORRIS: Hey, Davor, just before
18 you begin, I just want to put on the record
19 Highland's objection to documents that were
20 produced to me 10 minutes before the
21 deposition began.

22 MR. RUKAVINA: What the basis of
23 your objection?

24 MR. MORRIS: That they were due
25 quite some time ago, and the fact that you

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2 had -- I just think it's appropriate to --
3 to dump documents on somebody 10 minutes
4 before the deposition. I just think
5 that's --

6 MR. RUKAVINA: Well, these are
7 documents Highland produced. I'm not aware
8 of any rule I have to give you advance
9 documents when I know for the record that
10 other than the exhibits that you sent to us
11 last week, most of the exhibits you used
12 today you did not provide to me prior to
13 this deposition.

14 MR. MORRIS: No, but the documents
15 were produced by me in -- in litigation,
16 right?

17 MR. RUKAVINA: I'm going to use
18 primarily, John, the documents that you
19 produced to me today, but you may.

20 MR. MORRIS: Primarily. I've got --
21 I've got my objection. You have got your
22 response. Proceed.

23 Q. Mr. Waterhouse, again, I represent
24 the advisors, HCMFA and NexPoint Advisors.

25 Do you understand that?

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2 A. Yes.

3 Q. You and I have never met or talked
4 before today, have we?

5 A. No, I have -- I have heard your
6 voice on calls before.

7 Q. Okay.

8 MR. RUKAVINA: Madam Court Reporter,
9 I will use a few exhibits today. My
10 associate, Mr. Nguyen, will find some way
11 to get them to you. I don't know how to do
12 that, but it looks like you guys do.

13 I am going to use numbers as well.
14 But to differentiate them from Mr. Morris
15 we're going to mark mine with the prefix A
16 for advisors.

17 Do you understand?

18 COURT REPORTER: Yes.

19 MR. RUKAVINA: Okay. Perfect.

20 Q. Okay. So, Mr. Waterhouse, let's
21 start with those two HCMFA notes that you were
22 asked about, one for 5 million and one for
23 2.4 million.

24 Do you recall those notes?

25 A. Yes.

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2 Q. Were you ever the CFO of HCMFA?

3 A. I don't recall.

4 Q. So to the best of your recollection,
5 you were still an officer of HCMFA in 2019,
6 just that your title was treasurer?

7 MR. MORRIS: Object to the form of
8 the question. There is no leading here.
9 He works for your client.

10 MS. DANDENEAU: That is not -- that
11 is not true.

12 MR. MORRIS: He's the treasurer --
13 he is the treasurer of your client. I
14 don't -- I'm going to object every time you
15 try to lead, so...

16 MR. RUKAVINA: Totally fine to
17 object.

18 MR. MORRIS: Okay.

19 Q. Please answer my question,
20 Mr. Waterhouse.

21 A. I'm sorry, could you repeat? There
22 was...

23 Q. Yes. You were -- you testified
24 earlier that in 2019 you were an officer of
25 HCMFA; correct?

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2 A. Yes, I testified that I was the
3 treasurer and I didn't know if that incumbency
4 certificate, you know, was one that appointed
5 me as a treasurer, but yes.

6 Q. I'm just trying to confirm that
7 sitting here today, to the best of your
8 recollection, at that time you were -- your
9 title was treasurer. It was not chief
10 financial officer.

11 A. I don't recall that being my title.

12 Q. Okay. And in May of 2019, however,
13 I think you testified you were the chief
14 financial officer of the debtor; correct?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. Yes, I was -- yes.

18 Q. Okay. As such, in May of 2019, did
19 you have the authority, to your understanding,
20 to unilaterally loan \$5 million or \$2.4 million
21 to anyone on behalf of the debtor?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Sorry, can you repeat that?

25 Q. Yes. So in your capacity as the

10 A. No.

11 Q. Is it because loans of that amount
12 would have had to be approved by someone else?

13 A. Yes.

14 Q. Who in '20 -- in May of 2019, if
15 Highland wanted to loan 5 million or
16 \$2.4 million to someone, what would have been
17 the internal approval procedure?

18 MR. MORRIS: Objection to the form
19 of the question.

20 A. If -- if we had loans of that nature
21 that needed to be made due to their size, we
22 would have gotten approval from the -- the
23 president of Highland.

24 Q. And who that was individual?

25 A. It was James Dondero.

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2 Q. Okay. Now, I'm going to ask you a
3 similar question but for a different entity.

4 In May of 2019, as the treasurer of
5 HCMFA, did you believe that you unilaterally
6 had the ability to cause HCMFA to become the
7 borrower of a \$5 million loan and a
8 \$2.4 million loan?

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. No.

12 Q. What would -- what would the
13 approval have taken place -- strike that.

14 What would the approval process have
15 been like in May of 2019 at HCMFA for HCMFA to
16 take out a \$7.4 million loan?

17 MR. MORRIS: Objection to the form
18 of the question.

19 A. The process would have been similar
20 to what we just discussed on -- for Highland to
21 make a loan to others. So, again, you know,
22 we -- we would have -- either myself or someone
23 on the team would have discussed this with
24 the -- the president and owner of -- of HCMFA.

25 Q. And who was that individual?

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2 A. That was James -- Jim Dondero.

3 Q. So do I understand that in May of
4 2019, on behalf of both the lender, Highland,
5 and the borrower, HCMFA, Mr. Dondero would have
6 had to approve \$7.4 million in loans?

7 MR. MORRIS: Objection to the form
8 of the question.

9 A. Yes.

10 Q. You mentioned when Mr. Morris was
11 asking you the NAV error, N-A-V error, with
12 respect to TerreStar, without writing us a
13 novel, unless you feel like you have to, can
14 you summarize what that NAV error was? What
15 happened?

16 A. There was a -- in the Highland
17 Global Allocation Fund, it owned at the time an
18 equity interest in a company called TerreStar.
19 And TerreStar is -- at the time was a private
20 company, and it may still be today. Again, I'm
21 putting myself back then as a private company.

22 We had -- sorry, I don't mean we --
23 the fund and the advisor used Houlihan Lokey
24 to -- to value that investment. And during
25 that time there was some trades that were

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2 executed at market levels that were much lower
3 than the Houlihan Lokey model.

4 And based on information and
5 discussions with the portfolio managers and,
6 you know, principals that were very familiar
7 with TerreStar, it was determined that those
8 trades were non-orderly and they were not
9 considered in the valuation as consulted with
10 Houlihan Lokey and PricewaterhouseCoopers at
11 the time.

20 And at the culmination of that
21 process -- this is all summarized -- the value
22 that was -- that ultimately had to be used in
23 the fund's NAV was different than -- materially
24 different than what the original valuation at
25 Houlihan Lokey provided.

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2 And given that there was this fund
3 was, as we discussed -- I don't know if we
4 discussed it, but it was an open-ended fund
5 that was going -- that was converting to a
6 close-end fund.

7 Due to the fact that it was an
8 open-ended fund, you had to recalculate NAV and
9 see what the impact was on people -- on
10 investors coming in and out of the fund and if
11 there is a detrimental impact and to calculate
12 what that -- what that impact was and if there
13 was any amounts owed to the fund pursuant to
14 the error.

15 Q. Were you personally involved
16 internally at either Highland or HCMFA with
17 these investigations and discussions with the
18 SEC?

19 A. I was.

20 Q. Which other key people or senior
21 people at Highland were involved, to your
22 recollection?

23 A. Myself, Thomas Surgent, David Klos,
24 Lauren Thedford, Jason Post.

25 Q. Mr. Dondero, was he --

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2 A. I believe Cliff Stoops. I'm trying
3 to think. And maybe that is -- that is -- that
4 is -- that is all kind I can recall at the
5 moment.

6 Q. Do you recall whether it was
7 determined that the fund suffered losses as a
8 result of this error?

9 A. The -- the fund -- the -- the --
10 because the open-ended nature of the fund,
11 there were losses that were attributable to
12 investors. Meaning they -- they would have
13 redeemed and got a less money or -- or they
14 subscribed in and maybe because they didn't get
15 enough shares and then they later sold and then
16 they were harmed in that fashion.

17 And there is -- there is -- there
18 were very -- there were very detailed
19 calculations and, you know, all these different
20 scenarios that we had to -- I'm sorry, I keep
21 saying "we" -- that the individuals involved
22 had to calculate and quantify.

23 Q. Well, do you recall whether HCMFA
24 admitted certain fault and liability for this
25 error?

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2 A. I don't recall specifically.

3 Q. Do you recall whether HCMFA caused
4 any funds to be paid to the investors and the
5 fund the subject of the NAV error?

6 A. Yes.

7 Q. Do you recall the approximate amount
8 of funds, moneys paid to the investors and the
9 fund?

10 A. It was -- it was approximately
11 \$7 million.

12 Q. If I was to suggest 7.8 million,
13 would that ring more true or are you sticking
14 with your original answer?

15 A. It was -- it was approximately 7 --
16 7 to \$8 million. Again, I don't remember the
17 exact number, but it was in that ballpark.

18 Q. So regardless of whether HCMFA
19 accepted fault or liability, it caused some
20 \$7 million or more to be paid out to affected
21 investors in the fund?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. And I want to make sure I'm
25 understanding your question because there is a

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2 lot of different entities that are going on to
3 my head.

4 I think what you are saying is based
5 on this error, shareholders were harmed by this
6 approximately \$7.8 million -- by approximately
7 \$7.8 million. Is that what you are asking?

8 Q. Yes, sir.

9 A. Yes, that was -- again, I don't have
10 the exact numbers. If I take -- it was -- it
11 was in that ballpark, and there is a detail
12 calculation and write-up that could, that --
13 that exists someplace.

14 Q. Now, at that time, at the time that
15 the NAV error occurred, was there a contract in
16 place between HCMFA and the debtor pursuant to
17 which the debtor was providing services to
18 HCMFA?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. Yes.

22 Q. Was that contract generally called a
23 shared services agreement?

24 A. It was generally called that, but
25 there were -- there were -- I mean, it -- it --

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2 it depends on who you talk to, but yes,
3 generally, there were -- there are multiple
4 agreements.

5 Q. Pursuant to one or more of those
6 agreements, was the debtor providing certain
7 services to HCMFA?

8 MR. MORRIS: Objection to the form
9 of the question.

10 A. Yes.

11 Q. And can you at a very high level
12 summarize in 2018 and 2019 what those services
13 were?

14 A. Yes, there was a -- yes.

15 Q. Okay. Please -- please go -- go
16 through a short summary.

17 A. There was a -- a cost reimbursement
18 agreement between Highland Capital Management
19 Fund Advisors and Highland Capital Management,
20 L.P. That agreement was for what we referred
21 to as front office services, so investment
22 management, things of that nature.

23 There was I think what most people
24 refer to as the shared services agreement that
25 was -- that agreement was between Highland

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2 Capital Management Fund Advisors and Highland
3 Capital Management for back office services.

4 Q. And can you summarize what you mean
5 by back office services?

6 A. Those services were for accounting,
7 finance, tax, valuation, HR, IT, you know,
8 legal compliance, things of -- things of those
9 nature -- or things of that nature, excuse me.

10 Q. So in the spring of 2019, do you
11 recall whether HCMFA took the position that it
12 was actually Highland that caused the NAV error
13 to occur pursuant to the valuation services
14 that Highland was providing?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I do not recall.

18 Q. Did you ever have any discussions
19 with anyone, Jim Dondero or anyone in the first
20 half of 2019 as to whether Highland, the
21 debtor, that is, had any liability to HCMFA
22 related to the NAV error?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. I do not recall.

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2 Q. And then you mentioned that the fund
3 was being closed and some compensation related
4 to that. Can you -- can you elaborate? What
5 were you referring to?

6 A. Right. So the advisor, pursuant to
7 board approval, put a proposal in front of the
8 shareholders of the Highland Global Allocation
9 Fund to convert it from an open-ended fund to a
10 closed-end fund.

11 So an open-ended fund, when
12 shareholders subscribe to the fund or redeem
13 into the fund, they do it at NAV.

14 When it is -- when you have a
15 closed-end fund, closed-end funds are -- are
16 publicly-traded, like on the New York Stock
17 Exchange, exchanges like that, and -- and
18 shareholders or investors, they're not --
19 they're -- they're not subscribing and
20 redeeming with the fund. They are like shares
21 of Apple.

22 Those shares of the Highland Global
23 Allocation Fund trade on an exchange, and that
24 is how you, you know, that is how, you know,
25 you become an equity owner in the fund or you

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2 sell your shares and you are no longer an
3 equity owner.

4 As part of that proposal, the
5 advisor told shareholders if you -- if you vote
6 for this proposal to -- to convert it from an
7 open-ended fund to a closed-end fund, we will
8 pay you some amounts of money. I forgot -- a
9 certain number of points. I think it was
10 like -- it was like two to three points or
11 something -- something like that.

12 Q. Okay. You mentioned when Mr. Morris
13 was asking you, going back to those two
14 promissory notes, you will recall the 5 million
15 and 2.4 million, you mentioned something to the
16 effect that Mr. Dondero told -- told you to pay
17 some moneys out of Highland. Do you remember
18 that discussion with Mr. Morris?

19 A. I do.

20 Q. So, to the best of your
21 recollection, did you have a discussion with
22 Mr. Dondero about making some payments in May
23 of 2019 out of Highland?

24 A. I recall, as I testified earlier,
25 that I had a conversation with Mr. Dondero

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2 for -- for these amounts attributable to -- it
3 was either the error -- you know, the error,
4 and in that conversation he said, go get the
5 money from Highland. I believe that is what I
6 testified earlier, and that -- that is my
7 recollection.

8 Q. Do you recall if that was an
9 in-person meeting or some other mode for the
10 meeting?

11 A. I -- I -- I recall that being
12 in-person.

13 Q. Do you recall if anyone else was
14 present, or was it just you and Mr. Dondero?

15 A. I recall just he and I.

16 Q. And the moneys that he told you to
17 find from -- or get from Highland, was that in
18 the amount of \$5 million and \$2.4 million?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. I believe so, but I would have to go
22 back and look and see when those moneys were
23 actually paid into the -- into the fund and,
24 you know, when those transfers were done. If
25 they were all done around that same time, then

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2 yes, I would say it was -- it was all related
3 to that.

4 Q. Did Mr. Dondero tell you that those
5 funds would be a loan from Highland to HCMFA?

6 A. I don't recall.

7 MR. MORRIS: Objection to the form
8 of the question.

9 Q. Now, and forgive me, I'm probably
10 the only non-American born here, but I speak
11 reasonably well in English. I don't recall,
12 does that mean you don't remember or does that
13 mean it didn't happen?

14 MR. MORRIS: Objection to the form
15 of the question.

16 A. It -- it means I don't -- I don't
17 remember.

18 Q. Did Mr. Dondero tell you to have
19 those two promissory notes prepared?

20 A. I don't recall.

21 Q. When you -- again, when you say, I
22 don't recall today, that means that sitting
23 here today, you just don't remember one way or
24 the other. Is that accurate?

25 A. Yes.

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2 Q. Is it possible that you, having
3 heard what Mr. Dondero said and seeing funds
4 being transferred, assumed that that would be a
5 loan without him actually telling you that
6 would be a loan?

7 MR. MORRIS: Objection to the form
8 of the question.

9 A. Sorry, I want to make sure -- did I
10 ask the amounts that were transferred that I --
11 that -- that I assumed that that was a loan?

12 Q. Well, let me -- let me take -- let
13 me try again.

14 So you have established already that
15 there were quite a number of promissory notes
16 back and forth -- I'm sorry, quite a number of
17 promissory notes with affiliated companies and
18 individuals owing Highland money; right?

19 A. Yes.

20 Q. And you have established that there
21 were many transactions and transfers going back
22 and forth over the years; right?

23 MS. DANDENEAU: Objection to form.

24 A. In -- yes, in my capacity as CFO and
25 my employment, yes, that is -- yes.

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2 Q. And that's part of the reason why
3 you just can't remember some of the details
4 today because this -- this happened years ago,
5 and there were a number of transactions. Is
6 that accurate?

7 MS. DANDENEAU: Objection to the
8 form.

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. I mean, I deal with thousands of --
12 of -- of -- of transactions, you know, whether
13 it has -- the processing of transactions, you
14 know, if it has got, you know, more -- more
15 zeros, you know, behind it than others.

16 When you look at thousands of
17 transactions over the years for funds and
18 advisors and -- and, you know, financial
19 statements, I mean, it is -- it is very hard
20 going back in -- in -- in my -- you know,
21 14-ish year career at -- at Highland to
22 remember a lot of those details, especially
23 when I don't have any records or books or
24 anything like that, and -- and going back many
25 years.

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2 Q. And that is fine. That -- that --
3 that is why I asked the question.

4 Is it possible in May of 2019 when
5 Mr. Dondero told you to transfer the funds from
6 Highland, you just assumed on your own that
7 those would be loans without him actually
8 telling you that those would be loans?

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. I don't know.

12 Q. I'm sorry, you --

13 A. I said I don't know.

14 Q. Okay. Well, as the -- as the CFO
15 for Highland, if you saw \$7.4 million going
16 out, you would feel some responsibility to
17 account for that, wouldn't you?

18 MR. MORRIS: Objection to the form
19 of the question.

20 A. Yes.

21 Q. Is it fair to say that those would
22 be in the range large enough to rise up to your
23 level?

24 MR. MORRIS: Objection to the form
25 of the question.

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2 A. If -- I don't know if I understand
3 your question. Those amounts would arise to my
4 level where I would be involved or...

5 Q. You would want to know what a
6 transfer for that amount, \$7.4 million, was all
7 about, as the CFO of Highland, wouldn't you?

8 MR. MORRIS: Objection to the form
9 of the question.

10 A. Yes, I make it -- I mean, I -- I
11 review all sorts of payments, I mean, even
12 smaller dollar payments on a periodic basis,
13 you know, to -- to -- to understand and to make
14 sure that we are paying things in a -- you
15 know, in -- in -- in an informed way. And, you
16 know -- and we're -- and we're paying things
17 pursuant to vendor contracts and things like
18 that.

19 Q. So as part of that, is it possible
20 that seeing \$7.4 million go out you would have
21 promissory notes made in order to keep a paper
22 trail, assuming that those were loans, when
23 perhaps they were never intended to be loans by
24 Mr. Dondero?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. I don't know. As I testified
4 earlier, I had conversations with Mr. Dondero
5 about -- about the -- the moneys that
6 were needed for the NAV error. And I recall
7 him saying go get it from Highland -- or get it
8 from Highland.

9 Q. Well, why did you sign those
10 promissory notes and why didn't you have him
11 sign them?

12 MR. MORRIS: Objection to the form
13 of the question.

14 A. I don't know. I don't know.

15 Q. You mentioned earlier that you
16 typically don't sign promissory notes. Am I
17 remembering your testimony correctly?

18 I mean, promissory notes on behalf
19 of the entities. Not yourself, obviously.

20 A. Yes, that is what I said earlier.

21 Q. Do you recall any other promissory
22 notes in the million-plus range that you had
23 ever signed before on behalf of any entity?

24 A. There is -- there has been a lot of
25 transactions over the years. I don't -- I

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2 don't -- I don't recall generally. I don't --
3 I don't recall.

4 Q. So -- but to the best of your
5 recollection, it was on your initiative,
6 following your discussion with Mr. Dondero,
7 that you had someone draft those two promissory
8 notes; is that correct?

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. Yes, we would have -- the team, as I
12 stated earlier, we don't draft promissory
13 notes. "The team" meaning the accounting and
14 finance team.

15 So the team would have worked with
16 the legal group at Highland to draft any notes.

17 Q. Do you believe or do you have any
18 recollection as to whether you would have done
19 that pursuant to an email or telephone call or
20 in-person meeting?

21 MR. MORRIS: Objection to the form
22 of the question.

23 A. Are you asking if I would have -- if
24 those notes would have been drafted pursuant to
25 an email or phone call?

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2 Q. Strike that.

3 Do you recall whether you sent an
4 email to anyone asking them to draft those two
5 promissory notes?

6 A. I don't recall because, again,
7 once -- I would have instructed -- likely
8 instructed the team to -- to work with the
9 legal group to draft these documents.

10 I -- I -- I -- yeah, I didn't -- I
11 mean, that is more an operational-type
12 procedure. So, you know, a manager or a
13 controller or working with legal. You know,
14 they -- they can certainly handle that task to
15 get that -- you know, to request that from
16 legal.

17 Q. And who on your team do you think
18 you would have asked to do that?

19 MR. MORRIS: Objection --

20 Q. Who would have been the logical
21 person or people, if you don't remember their
22 name today?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. It -- it -- there is only two

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2 managers of the group. That would have been
3 Dave Klos or Kristin Hendrix.

4 Dave was the -- one of his duties
5 was managing the valuation team, and so he was
6 intimately involved with this process. So, you
7 know...

8 Q. Okay.

9 A. I don't recall specifically but, I
10 mean, my general -- you know, I -- I -- I
11 likely would have talked to Dave first about it
12 versus someone like Kristin who hadn't been
13 intimately involved.

14 Q. And -- and do you have a view as to
15 whether it is most likely that you would have
16 done that by email or in-person or how would
17 you believe you would have communicated that to
18 Mr. Klos?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. I likely would have done that in
22 person. Again, if things of this nature
23 that -- again, you have to put ourselves back
24 to, we have been working on this very stressful
25 project for many, many months. And once the

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2 go-ahead was to -- you know, we see the light
3 at the end of the tunnel with wrapping this up
4 and making shareholders whole -- sorry to say
5 "we" -- you know, the -- so the folks that are
6 involved in it.

7 I like to talk to people
8 face-to-face and -- and -- and go to -- and go
9 to their desk, because that shows if I'm going
10 to their desk that -- that is something that I
11 want done, you know.

12 Q. And do you remember, Mr. Waterhouse,
13 getting those two promissory notes in paper
14 format or by email before they were executed?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I don't recall.

18 Q. For whatever was the ordinary course
19 back then in May 2019, would you expect to have
20 received them only on paper or would you have
21 expected to have received them in Word document
22 or PDF document by email?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. I -- I didn't sign -- I signed very

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2 few documents via email. I can't say that it
3 never happened, but people either stopped by my
4 office and physically walked in documents for
5 signature that we discussed face-to-face.

6 Or documents were -- if -- if --
7 if -- if -- let's say I wasn't there or I
8 wasn't available, documents were dropped off.
9 I had -- I had some in- and outboxes in front
10 of my -- my office there at the Crescent.

11 Documents would be dropped off for
12 signature. There would be a cover sheet that
13 would be -- have been applied to those
14 documents detailing, you know, who dropped it
15 off, the purpose, why, what time.

16 And then, you know, as I stated, I
17 don't draft documents and I always go to the
18 legal group and the compliance group to make
19 sure that they're in the loop. And there is
20 a -- a box or section that says, Has legal
21 reviewed or approved, or something to that
22 nature.

23 Again, I don't -- I don't have
24 access to that cover sheet anymore, but it
25 was -- it was something to that effect.

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2 And my assistant, you know, if she
3 was there, she would review that -- you know,
4 whatever was being dropped off. And if that
5 has legal, you know, reviewed or -- reviewed or
6 approved it, if that wasn't -- if that stuff
7 hadn't been done, it was like she would just
8 tell them like, go -- go -- go to the legal
9 group, because --

10 Q. Let me -- let me pause --

11 MS. DANDENEAU: Let him finish.

12 MR. MORRIS: Thank you. Go ahead.

13 A. I take -- go to the legal group
14 because that -- that was my -- you know, I
15 didn't -- I didn't review anything that -- that
16 they weren't -- you know, or there wasn't some
17 representation made to me that they had
18 reviewed, approved in some capacity.

19 Again, my -- my -- my goal, as CFO,
20 is to provide transparency and make sure that
21 groups like compliance and other things -- and
22 the other group in legal are -- are in -- you
23 know, their -- they're made aware of
24 transactions of -- you know, that are crossing
25 my desk.

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2 Because I'm not in every
3 conversation. They're not in every
4 conversation -- meaning legal compliance -- and
5 I just want to make sure that -- that everyone
6 is in sync to, you know, to -- to the extent
7 possible.

8 Q. So if we summarize, you don't
9 specifically remember signing these two notes,
10 but most likely it would have been that they
11 would have presented -- been presented to you
12 physically on paper?

13 MR. MORRIS: Objection to the form
14 of the question.

15 A. They would -- they would have been
16 presented physically on paper most likely or
17 someone would have left it. But, I mean,
18 again, I don't -- I don't recall.

19 Q. I understand. Understand.

20 When you signed -- when you signed
21 documents, when you personally signed
22 documents, did you typically use a ink pen or
23 did you use a stamp?

24 A. No, I -- I -- I use a -- an -- an
25 ink pen.

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2 Q. Do you know -- was there a file at
3 Highland kept anywhere with ink-signed
4 originals of a promissory notes in general or
5 these two promissory notes specifically?

6 MR. MORRIS: Objection to the form
7 of the question.

8 A. Sorry, I just want to make sure I
9 understand your question. Are you saying is
10 there a file somewhere that has ink-signed
11 originals of these two promissory notes?

12 Q. Yes.

13 A. I would -- I would assume they're
14 some place. I mean --

15 Q. Well, was there a -- was there a
16 place where Highland generally kept originals
17 of promissory notes owed to it?

18 A. I wouldn't -- no.

19 MR. RUKAVINA: Mr. Nguyen, would you
20 please pull up my A7, alpha 7.

21 Q. These are the two promissory notes,
22 Mr. Waterhouse.

23 (Exhibit A7 marked.)

24 Q. And please -- Mr. Waterhouse, please
25 command my associate to scroll down as you need

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2 to, but I want you to take a very close look at
3 your two signatures here and tell me whether
4 you believe, in fact, that you ink signed them
5 or whether you --

6 MS. DANDENEAU: Mr. Rukavina,
7 Mr. Waterhouse has the copies.

8 MR. RUKAVINA: Perfect. Then you
9 can take this down, Mr. Nguyen.

10 A. These -- these -- these signatures
11 are identical, now that I stare at them, and I
12 mean, they are so close -- I mean, they're
13 identical that, I mean, even with my chicken
14 scratch signature, I don't know if I can -- you
15 know, I do this 100 times, could I do that
16 as -- as precisely as I see between the two
17 notes.

18 Q. Well, that is why I ask.

19 Mr. Waterhouse, now that you have examined
20 them, does it seem like it is more likely that
21 you actually electronically signed these?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Is -- I don't -- I don't recall
25 specifically. As I said before, my assistant

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2 did have a -- an electronic signature, and that
3 was used from time to time. It wasn't as
4 common practice back in 2019. It definitely
5 was more common practice when we had to work
6 from home and remotely for COVID because it
7 that made it almost impossible to, right,
8 provide wet signatures since we're all working
9 from home remotely.

10 Q. Well, going just for these two
11 promissory notes, Mr. Waterhouse, in light of
12 your inability to remember any details, are you
13 sure you actually signed either or both of
14 those notes?

15 MS. DANDENEAU: Objection to form.

16 A. I don't recall specifically
17 signing -- actually physically signing these
18 notes. As I said before, I don't recall doing
19 that. This -- this looks like my signature,
20 but yet these two signatures are identical.

21 Q. So you don't recall physically
22 signing them, and I take it you don't recall
23 electronically signing them either?

24 A. I don't recall. You know, Highland
25 has all my emails. If that occurred, you know,

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2 you know, I don't have any of these records is
3 what I'm saying. I don't have any of those
4 records.

5 Q. That is why I'm asking you these
6 questions in great detail because I don't have
7 those emails. I'm trying to -- I'm hoping that
8 you will give me some names or some details so
9 I can go look for more emails, but again, you
10 don't remember any -- any individual, other
11 than Mr. Dondero that we've discussed, you
12 don't remember any individual with whom you
13 discussed these promissory notes prior to their
14 execution?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I don't recall discussing it with
18 anybody else.

19 Q. Okay.

20 A. I mean, prior --

21 O. I understand.

22 A. You know, there was no one else --
23 there was no one else in that meeting that I
24 recall with Mr. Dondero.

25 Q. Now, when you established that by

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2 May of 2019 --

3 A. And -- and from what I recall, and
4 the reason why I was by myself is -- is, you
5 know, I don't -- I don't want to speculate, I'm
6 sorry.

7 Q. Okay. We have established that by
8 May of 2019, in your view, the liabilities of
9 HCMFA exceeded its assets; correct?

10 A. Yeah. I mean, again, I don't have
11 financial statements in front of me, but I
12 think, if I recall, we'd have to go through the
13 testimony with Mr. Morris, I believe that was
14 the case.

15 Q. In fact, you will recall that in
16 April of 2019, Mr. Dondero signed a document
17 that extended the demand feature of two prior
18 notes to May 31, 2019. Do you recall that?

19 MS. DEITSCH-PEREZ: I think you
20 might -- maybe have the court reporter read
21 that back. You might have misspoke.

22 (Record read.)

23 MR. RUKAVINA: And I did misspeak.

24 Q. I meant to say to May 31, 2021. Do
25 you recall that, sir?

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2 MR. MORRIS: Objection to the form
3 of the question.

4 A. Yes.

5 MR. RUKAVINA: And, Mr. Nguyen, just
6 so that the record is clear, will you please
7 pull up my Exhibit Alpha 10, A10.

8 (Exhibit A10 marked.)

9 Q. You don't have this one in front of
10 you, Mr. Waterhouse? This is the one that
11 Mr. Morris used earlier. Do you see that
12 document, sir?

13 A. Yes, I do.

14 Q. And this is what you were testifying
15 about before when Mr. Morris was asking you.
16 Do you remember that?

17 A. Yes.

18 Q. So here is my question for you,
19 Mr. Waterhouse: As the chief financial officer
20 of Highland, was it prudent for Highland less
21 than three weeks later to be lending
22 \$7.2 million to an insolvent entity that
23 couldn't even then pay its debts back to
24 Highland?

25 MS. DANDENEAU: Objection to form.

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2 MR. MORRIS: Objection to the form
3 of the question.

4 A. Sorry, I just want to make sure --
5 are you asking me, did you say, was it prudent
6 for Highland to loan \$7.4 million to HCMFA a
7 few weeks after this document was executed?

8 Q. Yes, and at a time when HCMFA's
9 liabilities exceeded its assets.

10 MR. MORRIS: Objection to the form
11 of the question.

12 A. I don't -- it is odd. I don't know.

13 MR. RUKAVINA: You can take this
14 exhibit down, Mr. Nguyen.

15 Q. Do you recall asking anyone,
16 Mr. Dondero or -- or anyone outside as to
17 whether Highland ought to be lending
18 \$7.4 million to HCMF regarding HCMF's
19 creditworthiness?

20 MR. MORRIS: Objection to the form
21 of the question.

22 A. I don't recall.

23 Q. Did you receive personally any of
24 that \$7.4 million?

25 A. No.

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2 Q. Did you even --

3 MR. MORRIS: I didn't hear that
4 question, sir.

5 MR. RUKAVINA: The one that he
6 answered, John, or my new one?

7 MR. MORRIS: No, no, your question,
8 Davor.

9 MR. RUKAVINA: I had asked him
10 whether he received any of the
11 \$7.4 million. He said no.

12 MR. MORRIS: Yeah. I thought there
13 was a question after that. Maybe I was
14 mistaken. I apologize.

15 MR. RUKAVINA: I had started a new
16 question, so here, let me start the new
17 question again.

18 Q. Did you personally receive any
19 direct benefit from those two notes for
20 \$7.4 million?

21 A. No.

22 Q. Did you ever personally consider
23 yourself obligated to repay either or both of
24 those notes?

25 A. No.

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2 MR. RUKAVINA: Pull up those notes
3 again, Mr. Nguyen.

4 Q. You can have them in front of you,
5 Exhibit 7, Mr. Waterhouse, whatever is easier
6 for you. If you go to your signature page, my
7 question to you is, why did you not include
8 your title as treasurer by your name, Frank
9 Waterhouse?

10 MS. DANDENEAU: Objection to form.

11 A. I didn't -- I didn't draft this
12 document.

13 Q. So you relied on whoever drafted it
14 to draft it correctly?

15 A. Yes.

16 Q. Okay. But back then when you signed
17 this, did it ever cross your mind that you were
18 the maker on these notes?

19 A. No.

20 Q. Back then when you signed this
21 document, did it ever cross your mind that you
22 could be a co-obligor on these notes?

23 A. No. I didn't receive \$7.4 million,
24 I mean...

25 Q. But can you say that HCMFA received

1 WATERHOUSE - 10-19-21

2 \$7.4 million?

3 A. I would have to go back and look and
4 check in, you know, the -- the financial
5 records and the bank statements.

6 MR. RUKAVINA: You can take this
7 exhibit down, Mr. Nguyen.

8 Q. Mr. Waterhouse, I'm not trying to be
9 a smart-ass, but if the law says that because
10 of the way that you signed this promissory
11 note, if that is what the law says, that that
12 made you personally -- personally liable, then
13 you would agree with me that that was never
14 your intent?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. That was never -- I wouldn't sign a
18 note and not get consideration in return.

19 Q. So putting all other issues aside,
20 if the law -- if the law says that you were
21 liable for those notes because of how you
22 signed them, then would you agree with me that
23 these notes are a mistake?

24 MR. MORRIS: Objection to the form
25 of the question.

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2 MS. DANDENEAU: Objection to the
3 form.

4 A. Yes.

5 Q. So do you agree with me that it's
6 odd -- I think that is the word you used --
7 that Highland would be loaning \$7.4 million a
8 few weeks after that extension to an entity
9 whose liabilities exceeded its assets, and you
10 would agree with me that it was never your
11 intention to be in any way liable for these two
12 promissory notes; correct?

13 MR. MORRIS: Objection to the form
14 of the question.

15 A. Sorry, you -- you asked a lot there.

16 MR. RUKAVINA: I will strike it and
17 I will move on.

18 Let's go to -- pull up Exhibit 9,
19 please Mr. Nguyen -- Alpha 9, I'm sorry, Alpha
20 9, A9.

21 (Exhibit A9 marked.)

22 Q. Sir, take a moment to look at this,
23 but this is an email, and you will see attached
24 July 31, 2020 affiliate notes.

25 Do you see that attachment?

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2 A. Yes.

3 Q. Okay. And do you see an entry for
4 Highland Capital Management Fund Advisors?

5 MR. MORRIS: I'm sorry, hold on.

6 Where are you looking?

7 MR. RUKAVINA: Last page, John.

8 MR. MORRIS: Is it the page on the
9 screen?

10 MR. RUKAVINA: Oh, I'm sorry.

11 Mr. Nguyen just did it. Yes, the last page
12 there.

13 MR. MORRIS: Thank you.

14 Q. Do you see an entry there for HCMFA?

15 A. Yes.

16 Q. About \$10.5 million.

17 Do you see that?

18 A. I do.

19 Q. And, now, do you have any
20 explanation for why if HCMFA owed \$7.4 million,
21 plus the 5.3 million that had been extended,
22 why that amount was only 10.5 million?

23 A. I don't know. Okay.

24 MR. RUKAVINA: Close this one and
25 pull up, Mr. Nguyen, the schedules,

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2 schedule of assets. What exhibit is this
3 of ours, Mr. Nguyen?

4 MR. NGUYEN: This is A11.

5 MR. RUKAVINA: Oh, this will be A11.

6 (Exhibit A11 marked.)

7 Q. You don't have this in front of you,
8 Mr. Waterhouse?

9 A. Okay.

10 Q. This is what Mr. Morris used
11 earlier. Do you remember looking at this with
12 Mr. Morris?

13 A. Yes.

14 MR. RUKAVINA: You might have to
15 zoom in a little. Okay.

16 Q. Now, I see Affiliate Note A, B, and
17 C.

18 Do you have any recollection as to
19 why the names of the affiliates are omitted?

20 A. I don't. I testified earlier that,
21 you know, the team worked with DSI in providing
22 these. I -- I don't -- I don't know.

23 Q. Can we deduce -- is it logical to
24 deduce that Affiliate Note A would be NexPoint
25 given its size of \$24.5 million?

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2 MR. MORRIS: Objection to the form
3 of the question.

4 A. I mean, it -- it is a -- it is -- it
5 is approximate.

6 Q. Well, can we -- can we deduce -- or,
7 I'm sorry, strike that.

8 Can you, sitting here today,
9 logically conclude that Affiliate Note B or C
10 represents HCMFA?

11 MR. MORRIS: Objection to the form
12 of the question.

13 A. I don't know. I don't know. I
14 can't.

15 Q. Okay. As of the petition date, we
16 have established that HCMFA, under promissory
17 notes, owed \$7.4 million and \$5.3 million to
18 the debtor; correct?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. Yes.

22 Q. Okay. And by my reckoning, that
23 would be somewhere approaching \$13 million.

24 MR. MORRIS: Objection to the form
25 of the question.

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2 Q. It would be \$12.7 million. Is that
3 generally correct?

4 A. Sorry, the amounts were 7.4, 5.3.

5 Q. Yes.

6 A. Okay. Yeah, that -- that -- I can
7 do that math, yes.

8 Q. Do you have any explanation or any
9 understanding of why there is no similar entry
10 listed here on the schedule of assets filed
11 with the bankruptcy court?

12 MR. MORRIS: Objection to the form
13 of the question.

14 A. I don't know. We have to look at
15 the supporting schedules, like I talked about
16 other -- presumably there is -- there is a
17 build to the schedule that would provide the
18 detail.

19 Q. Well, that was going to be my next
20 question. You anticipated it.

21 MR. RUKAVINA: You can -- you can
22 take this down, Mr. Nguyen.

23 Q. Do you believe that whenever you and
24 your team provided the underlying data to the
25 financial advisor that the actual names of the

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2 affiliates for Affiliate Note A, B, and C would
3 have been listed there?

4 A. Are you asking we provided the names
5 to the financial advisor? I don't -- I don't
6 understand who the financial advisor is.

7 Q. I'm sorry, DSI.

8 Let me ask the question this way,
9 Mr. Waterhouse.

10 Whenever you provided information
11 about the affiliate notes to DSI, do you
12 believe that you would have included the actual
13 names of the affiliates, you or your team, or
14 that you would have done the Affiliate Note A,
15 Note B, Note C?

16 MR. MORRIS: Objection to the form
17 of the question.

18 MS. DANDENEAU: Objection to the
19 form.

20 A. We -- like I testified earlier, when
21 we were -- we gave everything to -- to DSI. We
22 were giving all of our records, all of our
23 files, everything to DSI. We weren't redacting
24 information or saying, hey, here is a note,
25 here is Affiliate Note A or B.

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2 I mean, it was -- our job and our
3 focus -- and I testified in court back in 2019;
4 right -- was -- was to be transparent and, you
5 know, get DSI up to speed on -- on the matters
6 at Highland. So I can't see us redacting at
7 that point.

8 MR. RUKAVINA: Mr. Nguyen, will you
9 please pull up Mr. Morris' Exhibit 36.

10 Just the very first page, the very top
11 email. You might zoom in a little bit.

12 Q. Now, you recall being asked about
13 this by Mr. Morris?

14 A. Yes, I do.

15 Q. And you wrote: The HCMFA note is a
16 demand note.

17 You wrote that; right?

18 A. Yes.

19 Q. And, in fact, weren't there by that
20 point in time several notes?

21 A. Yes, there were. Again, I don't --
22 I don't remember everything specifically. I
23 mean --

24 Q. I understand. I understand.

25 So this is an example where -- where

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2 you might have made a mistake by referring to a
3 singular instead of a plural; right?

4 A. Yes.

5 Q. Okay. And you -- you wrote -- a
6 couple of sentences later, you wrote: There
7 was an agreement between HCMLP and HCMFA the
8 earliest they could demand is May 2021.

9 You wrote that; right?

10 A. Yes.

11 Q. But I think you -- you agreed with
12 Mr. Morris that that can't possibly apply to
13 the May 2019 notes, can it?

14 MR. MORRIS: Objection to the form
15 of the question. That is not what he
16 testified to.

17 Q. Let me ask -- let me ask a different
18 question.

19 Sitting here today -- or if you can
20 answer me from your memory on October 6,
21 2020 -- did the April acknowledgment that
22 extended the maturity date apply to the
23 May 2019 notes also?

24 A. I don't recall specifically.

25 Q. Well, you recall that the notes that

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2 you signed were demand notes; right?

3 A. Yes.

4 Q. Do you find it logical, based on
5 your experience, that had they intended to have
6 a different or a set maturity date, you would
7 have instructed that that set maturity date be
8 included instead of a demand feature?

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. Sorry, just want to make sure I
12 understand. You are saying that -- that the
13 \$5 million note, the \$2.4 million note, if
14 those were supposed to be a term note, that I
15 would have made sure that those were a term
16 note?

17 Q. I'm saying -- I'm saying,
18 Mr. Waterhouse, that on May the 2nd and May the
19 3rd, 2019, if you intended that those two
20 promissory notes could not be called until May
21 2021, would you have included such language in
22 those two promissory notes?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. I guess -- I'm sorry, I don't recall

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2 putting language in those May notes. I don't
3 remember what language you are referring to.

4 Q. Well, let's read this again.

5 There was an agreement between HCMLP
6 and HCMFA the earliest they could demand is May
7 2021.

8 Do you recall that agreement?

9 A. Yes, that was the agreement we
10 looked at earlier; correct?

11 Q. Okay. Yes.

12 Do you -- do you understand now that
13 that agreement that we looked at earlier also
14 applied to the May 2019 notes that you signed?

15 A. I don't -- I don't know.

16 Q. But as of October 6, 2020, you're
17 writing that there is one demand note and
18 you're categorizing that demand note as not
19 being demandable on May 2021; correct?

20 A. Yes.

21 Q. And you know now that you made at
22 least one mistake in this email; correct?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. Yes.

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2 MR. RUKAVINA: You can pull this
3 down, Mr. Nguyen.

4 Q. So, Mr. Waterhouse, you don't
5 remember Mr. Dondero telling you to make these
6 loans or not. HCMLP was loaning \$7.4 million
7 to someone that their assets were less than
8 their liabilities.

9 We don't see on the July list of
10 notes, where there is \$12.7 million of notes,
11 we don't see that on the bankruptcy schedules,
12 and we have this Exhibit 36 where you are
13 confused.

14 Are you prepared to tell me, sir,
15 today that you might have made a mistake in
16 executing those two promissory notes?

17 MR. MORRIS: Objection to the form
18 of the question.

19 A. I -- I don't know.

20 Q. And if it turns out that you're
21 personally liable for those promissory notes,
22 it would certainly be a mistake, wouldn't it?

23 MS. DANDENEAU: Objection to the
24 form.

25 MR. MORRIS: Join.

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2 A. Yes.

3 Q. If Mr. Dondero testifies that he
4 never told you to make these loans, would you
5 disagree with his testimony?

6 MR. MORRIS: Objection to the form
7 of the question.

8 A. Like I testified earlier with my
9 conversation with Mr. Dondero, all I recall is
10 he said, get the money from Highland.

11 Q. And if Mr. Dondero testifies that
12 he, in consultation with other senior personnel
13 at Highland, decided that Highland needed to
14 pay HCMFA \$7.4 million as compensation for the
15 NAV error and not a loan, would you have any
16 reason to disagree with Mr. Dondero?

17 MR. MORRIS: Objection to the form
18 of the question.

19 A. If that was -- if that was his
20 intent, yes, it would -- I would --

21 Q. Do you have any reason to disagree
22 with him?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. If that was his intent, I don't

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2 know. I don't know how I disagree with that.

3 Q. And just to confirm, you don't
4 remember ever asking Mr. Dondero whether you
5 should have two promissory notes prepared?

6 A. No.

7 Q. And you don't remember discussing
8 with Mr. Dondero what the terms of those two
9 promissory notes should be?

10 A. I don't recall -- I testified all I
11 recall is he said, get the money from Highland.
12 I don't -- the -- the terms of the note, I
13 don't recall ever having a discussion around
14 the terms of the note, but since I don't draft
15 the notes, that -- there could have been a
16 conversation with other people later.

17 Q. Do you have any memory of whether
18 after the notes were drafted, but before you
19 signed them, that you communicated with
20 Mr. Dondero in any way to just confirm or -- or
21 get his blessing or ratification to signing
22 those notes?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. I don't recall.

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2 Q. Again, the only thing you remember,
3 sitting here today, was Mr. Dondero said, get
4 the money from Highland, and that is it, that
5 is all you remember?

6 MR. MORRIS: Objection to the form
7 of the question.

8 A. I testified to that several times.
9 This was over two years ago. A lot has
10 happened. That is all I recall.

11 Q. And help me here. I'm not very
12 technologically astute. When you -- and I -- I
13 recognize that you do it rarely, but when you
14 sign a document electronically, do you believe
15 that there is an electronic record of you
16 having authorized or signed a document
17 electronically?

18 MR. MORRIS: Objection to the form
19 of the question.

20 A. I -- I don't know the tech answer to
21 that, but, you know, since I don't have -- I
22 don't ever attach my signature block
23 electronically, my assistant would have done
24 that, and if that is done over email like we
25 did several times -- you know, multiple,

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2 multiple times over COVID, she would attach my
3 signature block and then email it out to
4 whatever party.

5 Q. What was your assistant's name in
6 May 2019?

7 A. It was Naomi Chisum.

8 Q. Is she the only one? I'm sorry, was
9 she your only assistant that would have maybe
10 facilitated logistically something like you
11 just described?

12 A. You know, she was out on maternity
13 leave at some point. I don't -- I don't recall
14 those dates where she was out for maternity
15 leave. There was -- there were folks backing
16 her up. I don't recall specifically who
17 those -- who those, you know, administrative
18 assistants were, and I don't recall
19 specifically if she was out during this time on
20 maternity leave.

21 I do know that that she was out for
22 a period of time, or who knows, or she could
23 have been on vacation that day or, you know, I
24 don't know.

25 Q. Switching gears now, the two

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2 complaints that have been filed that is against
3 HCMFA and NexPoint, did you see any drafts of
4 those complaints before they were filed?

5 MR. MORRIS: Objection to the form
6 of the question, and to the extent that you
7 had any communications with counsel or you
8 were shown drafts of the complaints by
9 counsel while you were employed by
10 Highland, I direct you not to answer.

11 A. I -- I reviewed documents yesterday
12 with counsel here. I believe that is the first
13 time I have ever seen those.

14 Q. Okay. Did you ever discuss with
15 Mr. Seery these two lawsuits before or after
16 they were filed?

17 A. I don't recall.

18 Q. Were you ever interviewed by legal
19 counsel, to your knowledge, about these
20 promissory notes before the complaints were
21 filed? Without going into what was said, were
22 you ever interviewed by legal counsel?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. I don't recall.

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2 Q. Obviously with COVID, it changed,
3 but -- but before COVID, did you used to meet
4 with Mr. Seery from time to time in-person?

5 A. Yeah, I mean, so before COVID -- so
6 we're talking kind of late March, early April,
7 right, there was about -- I don't remember the
8 specific date when the board for Highland was
9 appointed. I believe it was around February of
10 2020, so maybe there was a month-and-a-half,
11 two-month window where we were meeting
12 in-person or, you know, like we were actually
13 in the office, excuse me, we were in the
14 office.

15 And, you know, when they were first
16 appointed, the board members and Mr. Seery
17 were -- were definitely down here more
18 in-person.

19 Q. Did you ever see Mr. Seery taking
20 written notes of -- of his meetings with you or
21 others?

22 A. I don't recall.

23 Q. Do you recall on any Zoom or video
24 conference with Mr. Seery, seeing him take
25 notes, written notes?

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2 A. The Zoom calls we had, I don't
3 recall having seen video or, you know, or if it
4 was on Zoom, I just remember it being -- well,
5 no, you know what, there were some -- you know,
6 I take that back.

7 So there were -- there were some
8 times that I did remember seeing Mr. Seery
9 on -- on some of the Zoom calls.

10 Q. Well, let me --

11 A. I don't -- sorry, I'm thinking. I'm
12 thinking -- I'm going back. I'm trying to
13 process this.

14 Q. I can make it much quicker,
15 Mr. Waterhouse. I have heard -- I have heard
16 that Mr. Seery is a copious note taker.

17 Do you have any knowledge about
18 that?

19 A. No.

20 Q. Okay. Switching gears yet again,
21 and this will be last theme. Do you need a
22 restroom break, or are you good to go for
23 another half an hour?

24 MS. DEITSCH-PEREZ: I need a
25 restroom break.

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2 MR. RUKAVINA: Can we make it five
3 minutes?

4 THE WITNESS: Five minutes would be
5 great.

6 VIDEOGRAPHER: We're going off the
7 record at 5:53 p.m.

8 (Recess taken 5:53 p.m. to 5:59 p.m.)

9 VIDEOGRAPHER: We are back on the
10 record at 5:59 p.m.

11 Q. Mr. Waterhouse, I had asked you
12 earlier about contracts between HCMFA and the
13 debtor, and now I'm going to talk about
14 contracts between the debtor and NexPoint
15 Advisors. Okay?

16 A. Okay.

17 Q. Now, were there contracts similar to
18 the ones with HCMFA that NexPoint had in the
19 nature of employee reimbursement and shared
20 services?

21 A. Yes, they -- NexPoint Advisors and
22 Highland Capital Management Fund Advisors had
23 cost reimbursement and shared services
24 agreements with Highland Capital Management,
25 L.P.

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2 Q. And was that shared services
3 agreement, to the best of your understanding,
4 in place as of December 31, 2020?

5 A. It was -- it was terminated at some
6 point, and I remember the contracts had
7 different termination dates, but I think the --
8 the date of termination was January 31st of
9 2021, after the termination was put in.

10 So yeah, it would be in place at the
11 end of the year of December -- it would be in
12 place at December 31st, 2020.

13 Q. And pursuant to that agreement as of
14 December 31st, 2020, was the debtor providing
15 what you would describe as back office services
16 to NexPoint?

17 A. Yes.

18 Q. Would those have included accounting
19 services?

20 A. Yes.

21 Q. And as part of those accounting
22 services, would the debtor have assisted
23 NexPoint with paying its bills?

24 MR. MORRIS: Objection to the form
25 of the question.

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2 A. Yes.

3 Q. So let's break that up. You were a
4 treasurer of NexPoint as well in December of
5 2020?

6 MR. MORRIS: Objection to the form
7 of the question.

8 A. Yes.

9 Q. Okay. And in December of 2020, did
10 NexPoint have its own bank accounts?

11 A. Yes.

12 Q. And did it use those bank accounts
13 to pay various of its obligations?

14 A. Yes.

15 Q. Did employees of the debtor have the
16 ability to cause transfers to be made from
17 those bank accounts on behalf of NexPoint?

18 A. Yes.

19 Q. And is that one of services that the
20 debtor provided NexPoint, basically ensuring
21 that accounts payable and other obligations
22 would be paid?

23 A. Yes.

24 MR. MORRIS: Objection to the form
25 of the question.

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2 Q. You answered yes?

3 A. Yes.

4 Q. And the payments, though, whose
5 funds would they be made from?

6 A. From the bank account of NexPoint
7 Advisors. If they were NexPoint advisor
8 obligations, it would be made from NexPoint
9 Advisors' bank account.

10 Q. So let's pull up Exhibit Alpha 1.
11 You should have that -- it is my Tab 1 or my
12 Exhibit 1.

13 (Exhibit A1 marked.)

14 Q. So this is a -- this is a series of
15 emails, Mr. Waterhouse. Let's look at the
16 first page here, November 25, 2020, between
17 Kristin Hendrix and yourself.

18 Do you see that, sir?

19 A. I do.

20 Q. And do you see where Ms. Hendrix
21 writes: NPA.

22 Do you know what NPA stood for?

23 A. Yes.

24 Q. And what does it stand for?

25 A. NexPoint Advisors.

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2 Q. And was that how you-all internally
3 at Highland refer to NexPoint Advisors, L.P.?

4 A. I mean, yes, amongst other things.

5 Q. And she writes at the bottom of her
6 email: Okay to release?

7 Do you see that?

8 A. Yes, I do.

9 Q. So what --

10 MR. MORRIS: Hold on one second.

11 Okay. Go ahead.

12 MR. RUKAVINA: Yeah.

13 Q. So what is -- what is Ms. Hendrix
14 here on November 25 asking of you?

15 A. She is asking me -- so she -- these
16 are -- these are payments -- typically we would
17 do an accounts payable run every week at the
18 end of every Friday. But looking at this date,
19 it is Wednesday, November 25th, which means, to
20 me, it is likely Thanksgiving weekend.

21 So this is the day before
22 Thanksgiving, so this is the last kind of --
23 kind of day before the holidays and vacation
24 and things of that nature. So it is
25 effectively the Friday of that week.

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2 So she is -- she is putting in all
3 the payments for the week because we batch
4 payments weekly. And these are the payments
5 that go out that week, and she is informing me
6 of the payments and -- you know, again, at the
7 bottom of the email, she is asking for my okay
8 to -- to release these payments in the wire
9 system.

10 Q. So these would be accounts payable
11 of NexPoint?

12 A. I mean, it would be accounts payable
13 for all of these entities listed on this email.

14 Q. And who was Ms. Hendrix employed by
15 in November and December of 2020?

16 A. Highland Capital Management.

17 Q. Okay. So -- so part of the services
18 that NexPoint had contracted with was for
19 Highland to ensure that NexPoint timely paid
20 its accounts payable; is that accurate?

21 MR. MORRIS: Objection to the form
22 of the question. You have got to be
23 kidding me.

24 Q. Is that accurate?

25 A. Yes.

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2 Q. And did NexPoint rely on employees
3 of the debtor to ensure that NexPoint's
4 accounts payable were timely paid?

5 MR. MORRIS: Objection to the form
6 of the question.

7 A. Yes.

8 MR. RUKAVINA: Let's flip to the
9 next page, Mr. Nguyen, if you will please
10 scroll to the next page.

11 Q. So this is an email similar to the
12 prior one, November 30th.

13 Do you see where it says, NPA HCMFA,
14 USD \$325,000 one-day loan?

15 Do you see that, sir?

16 A. I do.

17 Q. Do you have any memory of what that
18 was?

19 A. I don't recall what that -- what
20 that payment was for.

21 Q. Did it sometimes occur that one
22 advisor would, on very short-terms, make loans
23 to another advisor?

24 A. Yes. This -- this -- this occurred
25 from -- from -- from time to time. It actually

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2 looking at -- I'm -- I'm looking at the date of
3 this email. It is November 30th. It is the
4 last day of the month.

5 HCMFA has obligations it needs to
6 pay to its broker-dealer, which is HCFD. And
7 it likely was short funds to make those
8 obligations under that -- under its agreement,
9 and so it provided a one-day loan because on
10 the next business day on 12/1 -- or the next
11 business day in December, it would receive
12 management fees from the underlying funds that
13 it managed and it would be able to pay back
14 that loan to NexPoint Advisors.

15 Q. So -- so here Ms. Hendrix was
16 seeking your approval to transfer \$325,000 from
17 NexPoint to HCMFA for a one-day loan; is that
18 correct?

19 A. That is correct.

20 Q. Let's flip to the next page, sir.

21 MR. RUKAVINA: And, Mr. Nguyen, if
22 you will please scroll down.

23 Q. Now we have as an entry for
24 \$325,000, 11/30 loan payment.

25 Do you see that, sir?

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2 A. Yes.

3 Q. And that is probably the loan that
4 was approved on the prior page?

5 A. Yes, most likely.

6 Q. So is it also true, sir, that in
7 addition to accounts payable debtor employees
8 would be assisting NexPoint with respect to
9 paying back its debt?

10 MR. MORRIS: Objection to the form
11 of the question.

12 A. I mean, yes, for loans of this
13 nature, yes.

14 Q. Well, what about long term loans?
15 Was it reasonable for NexPoint to expect debtor
16 employees to ensure that NexPoint timely paid
17 its obligations under long-term notes?

18 MR. MORRIS: Objection to the form
19 of the question.

20 MS. DANDENEAU: Objection to form.

21 A. I mean, that is one of the things
22 that the Highland personnel did provide to the
23 advisors. Yes, we would -- we would -- over
24 the years, yes, we -- we -- we -- we did do
25 that generally. Again, I don't remember

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2 specifically but, yes, generally we -- you
3 know, we did do that.

4 Q. So do you recall -- and we can pull
5 it up, if need be -- that under the NexPoint
6 note that Mr. Morris asked you about earlier,
7 the one for more than \$30 million, that
8 NexPoint was obligated to make an annual
9 payment of principal and interest?

10 MR. MORRIS: Objection to the form
11 of the question.

12 A. Yes, it was -- yes, it -- it was an
13 amortizing note. It was -- you know, from what
14 we reviewed earlier, it was payable by
15 December 31st of each year. So -- but are --
16 are you asking me --

17 Q. I'm just asking you, sir, if you
18 recall the note.

19 A. Yes, the \$30 million note, yes, we
20 reviewed it earlier, yes.

21 Q. And do you recall Mr. Morris had you
22 go through the fact that NexPoint had made
23 payments in years prior to 2020 on that note?

24 A. I do.

25 Q. And do you believe that employees of

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2 the debtor would have played any role in
3 NexPoint having made those prior payments?

4 MR. MORRIS: Objection to the form
5 of the question.

6 A. Yes.

7 Q. And what role in years prior to 2020
8 would employees of the debtor have had with
9 respect to NexPoint making that annual payment?

10 A. We -- we -- we would have -- I keep
11 saying "we." The team would have calculated
12 any amounts due under that loan and other
13 loans, as -- as standard course.

14 We would -- since we provided
15 treasury services to the advisors, we would
16 inform the -- the -- the -- we informed
17 Mr. Dondero of any cash obligations that are
18 forthcoming, whether we do cash projections.

19 If, you know, any of these payments
20 would have -- or, you know, the sum total of
21 all of these payments, including any note
22 payments, if there were any cash shortfalls, we
23 would have informed Mr. Dondero of any cash
24 shortfalls. We could adequately plan, you
25 know, in instances like that.

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2 Or, sorry, we -- I say "we" -- I
3 keep saying "we" -- I keep wearing my -- again,
4 my -- my treasurer hat.

5 But, yes, it is to -- it is to
6 inform Mr. Dondero of the obligations of the
7 advisors in terms of cash and obligations that
8 are -- are upcoming and that -- and that are --
9 are scheduled to be paid.

10 Q. And would those obligations that are
11 upcoming and scheduled to be paid prior to 2020
12 have incurred the annual payment on that
13 NexPoint \$30 million note?

14 MS. DANDENEAU: Objection to form.

15 MS. DEITSCH-PEREZ: Davor, I think
16 you misspoke. You might want to just
17 repeat the question.

18 Q. Okay. Let me repeat the question,
19 sir.

20 Prior to 2020, those services that
21 you just described, would that -- on behalf of
22 the debtor, would that have included NexPoint's
23 payments on the \$30 million note?

24 A. Yes.

25 Q. So someone at the debtor in treasury

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2 or accounting would have sent some schedule or
3 a reminder that a payment would be coming due
4 in the future. Is that generally the practice?

5 A. Yes, we would -- you know, again, I
6 didn't -- I didn't micromanage the teams, but
7 we had a -- a corporate accounting calendar
8 that we use as kind of a tickler file to keep
9 track of payments.

10 I actually, you know, don't know how
11 actively they're using that in -- in prior to
12 2020, but it was actively used at some point.

13 We did look at NexPoint cash
14 periodically and cash for the other advisors as
15 well and payments. You know, we -- payments
16 like this would have appeared in our cash
17 projections, in the advisor's cash projections.

18 And, again, as like I said earlier,
19 they would have appeared there, so there would
20 be time to plan for making any of these
21 payments.

22 Q. And based on your experience, would
23 it have been reasonable for NexPoint to rely on
24 the debtors' employees to inform NexPoint of an
25 upcoming payment due on the \$30 million

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2 promissory note?

3 MR. MORRIS: Objection to form of
4 the question.

5 MS. DANDENEAU: Objection to form.

6 A. Yes. Yes, they did. I mean, but I
7 mean, but I don't think these -- these notes
8 were any secret to anybody.

9 Q. I understand, and I'm not suggesting
10 otherwise.

11 MR. RUKAVINA: Please pull up Alpha
12 2, Mr. Nguyen.

13 (Exhibit A2 marked.)

14 Q. Now, this document is similar to the
15 ones we've seen before as of December 31, 2020,
16 and I don't see under NTA anything there for
17 paying the promissory note to Highland.

18 Do you see anything like that?

19 A. I do not.

20 MR. RUKAVINA: You can pull that --
21 that exhibit down, Mr. Nguyen.

22 Q. You are aware, of course, by now
23 that, in fact, NexPoint failed to make the
24 payment due December 31, 2020, are you not?

25 A. I am aware, and yes, I do understand

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2 it.

3 Q. Were you aware that Highland
4 accelerated that \$30 million promissory note?

5 A. I am aware.

6 Q. Were you aware of that acceleration
7 at the time that it occurred?

8 A. I don't remember specifically.

9 Q. Do you recall whether anyone asked
10 you -- prior to the acceleration, anyone asked
11 you at Highland, what Highland should do with
12 respect to the missed payment?

13 A. Did anyone ask me what Highland
14 should do about the missed payment?

15 Q. Yes, before acceleration.

16 MR. MORRIS: Objection to the form
17 of the question.

18 A. I mean, what -- what I recall is
19 there was the -- sorry, are you asking me --

20 MS. DANDENEAU: Why don't you just
21 repeat the question, Mr. Rukavina.

22 Q. Let me try again, Mr. Waterhouse,
23 let me try again.

24 I am saying you're the CFO of
25 someone, in this case, Highland, and the

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2 borrower failed to make the required payment.

3 Are you with me so far?

4 A. I am.

5 Q. Did anyone then ask you, what should
6 we do with respect to our rights against the
7 borrower that missed the payment?

8 A. Not that I recall.

9 Q. Did you play a role in the decision
10 to accelerate that \$30 million promissory note?

11 A. I did not.

12 Q. Do you recall whether Mr. Seery ever
13 asked you before the acceleration as to whether
14 he should accelerate the note?

15 A. I don't recall.

16 Q. And you don't recall when you
17 learned of the acceleration itself?

18 MR. MORRIS: Objection to the form
19 of that question.

20 A. It was -- it was sometime in
21 early -- in early 2021. I don't remember
22 specifically.

23 Q. But do you recall whether it was
24 after the acceleration had already been
25 transmitted?

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2 MS. DANDNEAU: Objection to the
3 form of the question.

4 A. I don't recall.

5 Q. Do you recall in early to mid
6 January of 2021, after the default, discussing
7 the default with Mr. Dondero?

8 A. I do recall discussing with
9 Mr. Dondero after December 31, 2020?

10 Q. Yes, the fact of the default.

11 A. I don't recall.

12 MR. RUKAVINA: Let's pull up my
13 Exhibit 6, Alpha 6.

14 (Exhibit A6 marked.)

15 MR. RUKAVINA: And, Mr. Nguyen, if
16 you will please scroll down.

17 Q. This email chain begins with you
18 writing to Ms. Hendrix on January the 12th:
19 NexPoint note to HCMLP.

20 Do you see that, sir?

21 A. I do.

22 Q. Were you discussing this same
23 \$30 million note we're talking about right now
24 with Ms. Hendrix?

25 A. Yes.

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2 Q. Okay. Do you recall what prompted
3 you to send that email to her?

4 A. Yes, I had -- I had a conversation
5 with Jim.

6 Q. Okay. And what -- what did you
7 discuss with Jim that led to this email chain?

8 A. He -- he called me and he said he
9 wanted to make payment on the NexPoint note,
10 and I didn't -- I didn't know the -- the amount
11 offhand, so I reached out to Kristin and got
12 the details and relayed that to him.

13 Q. And you see you sent that email to
14 her at 11:15 a.m. Does that help you remember
15 when you had this discussion with Mr. Dondero?
16 In other words, was it that morning or the day
17 before, or can you -- can you --

18 A. No, it was -- it was that morning.

19 Q. And do you recall how you had that
20 conversation with him?

21 MR. MORRIS: Objection to the form
22 of the question.

23 Q. By telephone, by email, in-person?

24 A. Yeah, he -- he called me. I was at
25 home. We were working from home here in

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2 December of 2020. He called me from home. He
3 said he was in court. He wanted to -- he asked
4 about, you know, making payment on the note and
5 the amount, and so I didn't have those numbers
6 in front of me, so I said I would get back to
7 him. I wanted all the details, so here is
8 this -- so I reached out to Kristin.

9 Q. And then she gave you that
10 \$1,406,000 figure?

11 MR. RUKAVINA: Mr. Nguyen, if you
12 will scroll up, please.

13 A. Yes. Yeah, she -- the \$1,406,112.

14 Q. And do you recall whether you
15 conveyed that amount to Mr. Dondero?

16 A. Yes. I -- I called him back and
17 gave him -- gave him this amount.

18 Q. Are you aware of whether NexPoint,
19 in fact, then made that 1 million 406 and
20 change payment?

21 A. Yes, they did.

22 Q. Did you discuss with Mr. Dondero at
23 that time, either the first conference or the
24 second conference that day -- strike that.

25 When you conveyed the number to

1 WATERHOUSE - 10-19-21

2 Mr. Dondero, was -- was it also on January
3 12th?

4 A. Sorry, when I conveyed the
5 \$1.4 million number?

6 Q. Yes.

7 A. Yes, yes, it was that -- it was --

8 Q. So you had --

9 A. It was that point.

10 Q. Well, to the best of your
11 recollection, you had a conference with
12 Mr. Dondero by the telephone in the morning,
13 and then another conference with him by
14 telephone after 11:40 a.m. that morning?

15 A. Yeah, I can't remember -- yeah, it
16 was either that morning or it could have been,
17 you know, early afternoon, but again, I
18 remember calling him back, relaying this
19 information to him, and he said, okay, pay --
20 you know, make -- make this payment.

21 Q. And during either of those two
22 calls, did you tell Mr. Dondero anything to the
23 effect that making those -- I'm sorry, making
24 that payment would not de-accelerate the
25 promissory note?

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2 A. No.

3 Q. Did you tell him anything to the
4 effect that making that payment would not cure
5 the default?

6 A. No.

7 Q. Did you discuss that in any way with
8 him?

9 A. No, I did not.

10 Q. Did he say why he wanted to have
11 that \$1.4 million payment made?

12 MR. MORRIS: Objection to the form
13 of the question.

14 A. He -- he -- he didn't go into
15 specifics.

16 Q. Did he say anything to you to the
17 effect that if NexPoint makes that payment,
18 then the note will be de-accelerated?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. I don't recall.

22 MR. RUKAVINA: You can put this one
23 down, Mr. Nguyen.

24 Q. And, again, when you say you don't
25 recall, you mean you don't remember right now

1 WATERHOUSE - 10-19-21

2 either way; correct?

3 A. Yeah, I don't remember. I don't
4 remember us discussing that.

5 Q. Now -- and we're almost done, I
6 promise. I'm just going to -- I don't know how
7 to ask this question, so I'm just going to try
8 to do my best.

9 Prior to the default on December 31,
10 2020, did Mr. Seery ever tell you any words to
11 the effect that you or someone at Highland
12 should ensure that NexPoint doesn't make its
13 payment?

14 A. No.

15 Q. Did you have any hint or any belief
16 that anyone at NexPoint -- I'm sorry, strike
17 that.

18 Did you have any reason to believe
19 that anyone with Highland was actively trying
20 to get NexPoint to make that default by not
21 paying on December 31?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Are you asking, did any Highland
25 employees actively work to make -- to

1 WATERHOUSE - 10-19-21

2 somehow --

3 Q. Yes. Let me take a step back. Let
4 me take a step back.

5 So you are aware now that as a
6 result of that default, what was still some
7 25-year note was accelerated and became
8 immediately due. You are aware of that now;
9 right?

10 A. Yes.

11 Q. And can you see how someone at
12 Highland might actually have been pleased with
13 that development?

14 MR. MORRIS: Objection to the form.

15 Q. Not that they were --- not that they
16 were pleased, but you can see how someone at
17 Highland might have been pleased with that
18 development?

19 MR. MORRIS: Objection to the form
20 of the question.

21 MS. DANDENEAU: Object to form.

22 A. I don't know how they would have
23 reacted to that.

24 Q. Okay. But you're not -- you're not
25 aware of any instructions or any actions being

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2 given or taken at Highland by Mr. Seery, the
3 independent board, DSI, that -- that would have
4 basically led Highland to ensure that NexPoint
5 would fail to make that payment?

6 A. I'm not aware.

7 Q. In other words, there wasn't a trick
8 or a settlement; right?

9 MS. DEITSCH-PEREZ: Objection to
10 form.

11 MS. DANDENEAU: Object to form.

12 MR. MORRIS: Object to form.

13 A. I'm not aware.

14 Look, I'm not aware. I'm not in
15 every conversation. I mean, and I'm just --
16 again, I'm sitting at home. It is the end of
17 the year. Again, I'm not aware.

18 Q. That is a perfectly legitimate
19 answer. I don't know why -- why you think
20 otherwise.

21 Okay. Just give me one second to
22 compose my thoughts.

23 MS. DEITSCH-PEREZ: While you're
24 taking your one second, why don't we take
25 three minutes. I will be right back.

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2 VIDEOGRAPHER: Do we want to go off
3 the record?

4 MR. RUKAVINA: Yes.

5 VIDEOGRAPHER: All right. We're
6 going off the record at 6:27 p.m.

7 (Recess taken 6:27 p.m. to 6:30 p.m.)

8 VIDEOGRAPHER: We are back on the
9 record at 6:30 p.m.

10 MR. HORN: Is Deb back?

11 MS. DANDENEAU: Are you asking about
12 me? I'm here.

13 MR. HORN: Oh, okay. I don't see
14 you, sorry.

15 Q. Actually, yeah, Mr. Waterhouse, so
16 when you had --

17 MS. DANDENEAU: Are you asking about
18 Deb Dandeneau or Deborah? I mean, there
19 are a lot -- as we talked about, a lot of
20 Debs. I'm here.

21 MS. DEITSCH-PEREZ: I'm here.

22 MR. HORN: Yes, I was asking about
23 DDP.

24 MS. DEITSCH-PEREZ: Oh, DDP is here.

25 MR. HORN: Okay. Here we go. I'm

1 WATERHOUSE - 10-19-21

2 going back on mute.

3 MS. DANDENEAU: Get the right
4 nomenclature.

5 Q. Mr. Waterhouse, on January 12th,
6 2021, when you had those talks with Mr. Dondero
7 about the \$1.4 million payment, did you have a
8 communication or a conversation with Mr. Seery
9 about that payment after January 12th, 2021?

10 A. I don't recall.

11 Q. Well, in response to Mr. Dondero
12 reaching out to you, do you recall on that day,
13 January 12th, talking to Mr. Seery or anyone at
14 Highland other than the email chain we just saw
15 about Mr. Dondero's call with you?

16 A. Did I talk to -- I spoke with
17 Kristin -- I don't know if I spoke to her. I
18 likely spoke to Kristin Hendrix because we had
19 to get the wire on NexPoint's behalf to make
20 the payment to Highland.

21 Q. So it is true, then, that -- that
22 employees of the debtor did actually cause that
23 payment to be made when it was made after
24 January 12th?

25 A. Yes, I mean, we -- we -- as I

1 WATERHOUSE - 10-19-21

2 testified earlier, we provided that accounting
3 finance treasury function as -- under the
4 shared services agreement. And so once I
5 got the -- I talked to Jim, got the approval to
6 make this payment, we have to then make the
7 payment, or the team does, and so the payment
8 was made.

9 Q. Okay. But -- okay. And -- and
10 sitting here right now, after Jim called you,
11 you don't remember talking to anyone other than
12 the -- the couple of people you mentioned,
13 talking to anyone about something to the effect
14 that, hey, Jim wants to make this payment now?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I don't -- I don't recall.

18 Q. And does that include legal counsel?
19 Without going into any detail, on
20 January 12th or before that payment was made,
21 did you consult with legal counsel about
22 anything having to do with the \$1.4 million
23 payment?

24 A. I don't recall.

25 Q. Okay. Thank you, sir, for your

1 WATERHOUSE - 10-19-21

2 time.

3 MR. RUKAVINA: Pass the witness.

4 MR. MORRIS: I just have a few
5 questions, if I may.

6 MS. DEITSCH-PEREZ: Don't you go at
7 the end?

8 MR. MORRIS: Oh, I apologize. He is
9 your witness. I'm surprised you want to
10 ask him questions, but go right ahead.

11 MS. DEITSCH-PEREZ: Just have a
12 couple of things.

13 MR. RUKAVINA: And I will just
14 object to that, that he's our witness.
15 That's not --

16 MR. MORRIS: I'm not talking to you.
17 I'm not talking to you.

18 MS. DANDNEAU: Also, Mr. Morris, it
19 is -- it is --

20 MS. DEITSCH-PEREZ: He is not my
21 witness. He's been subpoenaed by you.
22 Okay?

23 That is no offense, Mr. Waterhouse,
24 I'm -- I'm not -- okay. Anyway.

25 EXAMINATION

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2 BY MS. DEITSCH-PEREZ:

3 Q. Good evening. I'm very sorry to be
4 going last and I know you have had a long and
5 taxing day, so I thank you for indulging me.

6 The kinds of services that you
7 describe that the -- that Highland provided for
8 NexPoint, did Highland also provide similar
9 services to that to HCRE and HCMS?

10 A. Yes.

11 MR. MORRIS: Objection to the form
12 of the question.

13 Q. What kind of services did Highland
14 provide to HCRE and HCMS?

15 MR. MORRIS: Objection to the form
16 of the question.

17 MS. DEITSCH-PEREZ: What is your
18 objection, John?

19 MR. MORRIS: It is vague and
20 ambiguous. Unlike the advisors and
21 NexPoint, they actually had shared services
22 agreements.

23 MS. DEITSCH-PEREZ: I got -- I
24 understand your objection. That is fine.

25 Q. Let's take them one at a time.

1 WATERHOUSE - 10-19-21

2 What kinds of services did Highland
3 provide to HCRC?

4 MR. MORRIS: Objection to the form
5 of the question.

6 A. HCMS, Highland employees provided
7 accounting services, treasury management
8 services, potentially legal services. I
9 don't -- but I wouldn't have been directly
10 involved in that. But as far as the teams that
11 I manage, it was accounting, treasury, things
12 of that nature.

13 Q. Okay. And that was for HCM, LLP --

14 A. And -- and, sorry, it would also be
15 any asset valuation if needed as well.

16 Q. Okay. We went back and forth on
17 each other and I apologize, so just to clarify.

18 You were talking about the services
19 that Highland Capital Management provided to
20 HCMS; is that right?

21 A. HCMS. So, again, yes. And
22 accounting, treasury, valuation, and also tax
23 services too.

24 Q. Okay.

25 A. Tax services. Look, I'm expanding

1 WATERHOUSE - 10-19-21

2 this, their HR services as well.

3 Q. Okay. And did that include bill
4 paying?

5 MR. MORRIS: Objection to the form
6 of the question.

7 Q. Did the services that HCM provided
8 to HCMS include bill paying?

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. Yes.

12 Q. And did the services that HCMLP
13 provided to HCMS include scheduling upcoming
14 bills?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. Yes.

18 Q. And did HCMLP regularly pay -- cause
19 to be paid the payments on loans HCMS had from
20 HCMLP?

21 MR. MORRIS: Objection to the form
22 of the question.

23 A. Yes.

24 Q. Typically -- if there is a
25 typically, how far in advance of due dates did

1 WATERHOUSE - 10-19-21

2 HCMLP cause HCMS to pay its bills?

3 MR. MORRIS: Objection to the form
4 of the question.

5 A. I mean, it -- it -- it depend -- it
6 depended on the nature of the payment and the
7 vendor, but, you know, if there were -- if
8 there were larger scheduled payments, you know,
9 I would like to give at least 30 days notice.

10 And that is -- that is kind of my
11 rule of thumb so no one is surprised.

12 Q. Okay. And was it generally HCMLP's
13 practice to timely pay HCMS' bills?

14 MR. MORRIS: Objection to the form
15 of the question.

16 A. It -- it -- it -- that depended on
17 the nature of the payment.

18 Q. Okay. And can you explain what you
19 mean by that?

20 A. Yeah, I mean if -- if it was -- I
21 mean -- if there was some professional fees
22 that weren't -- you know, they were due but
23 they weren't urgent, those fees may not be paid
24 as timely as others that have a due date or --
25 or things like that.

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2 Q. Okay. Are loan payments the kinds
3 of thing that HCMLP would pay on time because
4 of potential consequences of not paying on
5 time?

6 MR. MORRIS: Objection to the form
7 of the question.

8 A. Yes. As I testified earlier, we
9 would want to give, you know, notice on -- on
10 -- on larger payments and -- and things of that
11 nature so we didn't miss due dates.

12 Q. Okay. And over the course of time,
13 did HCMLP generally pay HCMS' loan payments in
14 a timely fashion?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I can't remember specifically, but
18 generally, yes.

19 Q. Okay. Now, did HCMLP provide
20 similar services to HCRE that you have
21 described it provided to HCMS?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Yes, but I don't think it -- it
25 provided -- I don't think it provided HR

1 WATERHOUSE - 10-19-21

2 services.

3 Q. Can you describe the accounting and
4 treasury services that HCMLP provided for HCREE?

5 A. Yeah, it -- it would provide
6 bookkeeping services on a -- on a periodic
7 basis. It would make payments, you know, as
8 needed.

9 Q. Okay. So did it provide --

10 A. And -- and I believe it -- it -- it
11 provided tax services as well.

12 Q. Okay. And so did it provide the
13 same kind of bill -- did HCMLP provide the same
14 kind of bill-paying services for HCREE that it
15 provided for HCMS and NexPoint?

16 MR. MORRIS: Objection to the form
17 of the question.

18 A. Yes.

19 Q. And over the course of time, did
20 HCMLP generally cause to be made the loan
21 payments that HCREE owed to HCMLP?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Yes.

25 Q. Did HCMLP make loan payment -- the

1 WATERHOUSE - 10-19-21

2 loan payment that was due from HCMS to HCMLP in
3 December of 2020?

4 MR. MORRIS: Objection to the form
5 of the question.

6 A. I don't believe that payment --
7 payment was made.

8 Q. Okay. And when HCMLP caused HCMS in
9 the past to make loan payments, whose money did
10 it use to make those payments?

11 MR. MORRIS: Objection to the form
12 of the question.

13 A. It was the -- the money in HCMS's
14 operating account would be made to that --
15 those moneys would be used to make payment to
16 Highland Capital Management.

17 Q. Okay. And Highland -- is it correct
18 that Highland Capital Management personnel had
19 the access to HCMS's accounts to be able to
20 cause such payments to be made?

21 A. Yes, Highland personnel had access
22 to those accounts.

23 Q. Okay. And so now for HCRE, whose
24 money was used when HCMLP caused HCRE
25 payments -- loan payments to Highland to be

1 WATERHOUSE - 10-19-21

2 made?

3 MR. MORRIS: Objection to the form
4 of the question.

5 A. It was -- it was cash in HCRE's bank
6 account that would be used to make payments to
7 Highland Capital Management.

8 Q. Okay. And so did Highland Capital
9 Management have access to HCRE's funds in order
10 to be able to make such payments?

11 MR. MORRIS: Objection to the form
12 of the question.

13 A. Personnel at Highland Capital
14 Management had access to HCRE's bank account to
15 effectuate the payments.

16 Q. Okay. And was the payment due from
17 HCRE to HCMLP due in December of 2020 made?

18 A. It --

19 Q. In December of 2020.

20 A. It was not.

21 Q. Okay. And was there money in HCRE's
22 account that would have enabled the payment to
23 be made had HCM personnel attempted to make the
24 payment?

25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21

2 of the question.

3 A. I -- I don't recall.

4 Q. Do you have any reason to believe
5 that either HCRE or HCMS simply didn't have the
6 funds on hand to make the December 2020
7 payments?

8 A. I don't know.

9 Q. I guess I'm asking, do you have any
10 reason to believe that they didn't have the
11 funds?

12 A. We managed cash for so many
13 different entities and funds, and I don't
14 recall, you know, where the cash position was
15 for HCRE and HCMS at 12/31/2020.

16 Q. Okay.

17 A. I just don't recall, and I don't --
18 and I don't remember what the loan payment
19 obligations were from HCRE to Highland, and
20 from HCMS to Highland. I don't recall. I
21 don't recall, I mean...

22 Q. Let me come at it a different way.
23 Were the -- were the payments that would
24 otherwise have been due in December of 2020
25 made in January of 2021 for HCMS and HCRE?

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2 A. I believe the HCRE payment was made
3 in January of 2021. I don't recall any
4 payments being made from HCMS to Highland.

5 Q. If it -- how is it the HCRE payment
6 came to be made? Why did you make it -- why
7 did HCM make the payment in January of 2021?

8 A. Jim -- Jim called me and instructed
9 me to -- to make the payment on behalf of HCRE,
10 Jim Dondero -- Jim Dondero.

11 Q. Did he seem upset that -- that the
12 payment had not been made?

13 A. Yeah. On the note that was, you
14 know, that was the term note, yes, he -- he was
15 displeased that the -- that the payment had not
16 been made by year-end.

17 Q. Okay. And did you make the -- cause
18 the payment to be made as -- as requested?

19 A. Yes.

20 Q. And did anyone else from HCM
21 participate with you in causing the payment to
22 be made to -- on the HCRE loan?

23 A. Yes. It would have been Kristin
24 Hendrix. I -- again, I don't -- as I testified
25 earlier, I'm not an officer of HCRE. I don't

1 WATERHOUSE - 10-19-21

2 believe I'm an authorized signer. So I
3 can't -- other personnel have to make payment
4 from HCRE to -- to -- to -- to Highland.

5 Q. Okay. And in the conversation
6 that -- that you had with Mr. Dondero when he
7 requested the payment to be made, did you say
8 to him words to the effect, Jim, this loan is
9 going to stay in default, what are you making
10 the payment for, anything like that?

11 A. No.

12 Q. In fact, did you have the impression
13 from him that he thought that the loan would
14 be -- the default would be cured by making the
15 payment?

16 MR. MORRIS: Objection to the form
17 of the question.

18 A. Did I get the impression from Jim
19 Dondero that the loan would be cured if the
20 payment from HCRE --

21 Q. Yeah, if that is what he thought.

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. I didn't get any impression from him
25 on that at the time.

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2 Q. Do you know whether there was an
3 HCMS term loan that had a payment due in
4 December of 2020?

5 A. I don't recall.

6 Q. Okay. And so the reason you don't
7 recall whether or not there was a payment in
8 January of 2021 is because you just don't
9 remember whether there was such a loan at all?

10 MR. MORRIS: Objection to the form
11 of the question.

12 A. I don't remember. There is -- there
13 is so many notes, and I mean, demands, and I
14 don't -- I don't remember. It's a lot to keep
15 track in your head.

16 Q. I understand, and -- and I hear your
17 frustration when you have explained that the
18 debtor has your documents and you don't, and so
19 I fully appreciate it, and this is no knock on
20 you. It's a knock on somebody else on this
21 call.

22 MR. MORRIS: I move to strike. That
23 was pretty obnoxious, but go ahead.

24 Q. Okay. But so, Mr. Waterhouse, if --
25 if a payment on the HCMS loan was made in

1 WATERHOUSE - 10-19-21

2 January of 2021, do you think it was part of
3 the same conversation where Jim Dondero said,
4 hey, why didn't that get paid, please make
5 that -- get that payment done?

6 MR. MORRIS: I object to the form of
7 the question.

8 A. Yes. Likely it would have been -- I
9 mean, again, I don't recall a payment being
10 made, but, you know, again, I don't remember
11 everything.

12 Q. Okay. Did -- at the time you were
13 communicating with Kristin Hendrix about the
14 payment being made, whichever payments were
15 made in January, did she say anything to you
16 about the payments not curing the loan
17 defaults?

18 A. No.

19 Q. Okay. All right. So I'm going to
20 take you back to very early in the deposition
21 when Mr. Morris was asking you about the --
22 the -- the -- the agreement with respect to
23 the -- the forgiveness element of the loans, so
24 that is just to orient you.

25 Do you remember that there was a

1 WATERHOUSE - 10-19-21

2 time that you and Mr. Dondero were
3 communicating about potential means of
4 resolving the Highland bankruptcy by what was
5 colloquially referred to as a pot plan?

6 A. Yes.

7 Q. Okay. And can you tell me generally
8 when that was?

9 A. Like mid -- mid 2020, sometime in
10 2020, mid 2020.

11 Q. Okay. And did the process of trying
12 to figure out what the numbers should be
13 involve looking at what one should pay for the
14 Highland assets?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. Yes.

18 Q. Okay. And did there come a time
19 when you were proposing some potential numbers
20 and Mr. Dondero said something to you like,
21 well, why are you including payment for the
22 related party notes, those, you know, were
23 likely to be forgiven as part of my deferred
24 executive compensation?

25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21

2 of the question.

3 A. Yes, we did have that conversation.

4 Q. Okay. Was that conversation in
5 connection with trying to figure out the right
6 numbers for a pot plan?

7 A. Yeah. I mean, it was -- it was -- I
8 mean, Jim -- Jim would ask for, you know,
9 most -- most recent asset values, you know, for
10 Highland, and -- and myself and the team
11 provided those to him, so it was in that
12 context.

13 Q. Okay. And does that refresh your
14 recollection that these communications were in
15 2020 rather than 2021?

16 MR. MORRIS: Objection to the form
17 of the question.

18 A. The -- the -- the executive
19 compensation discussions were definitely in
20 2020.

21 Q. Okay. Now, did you ever make
22 proposals that took into account Jim's comment
23 that the notes were likely to end up forgiven
24 as part of his compensation?

25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21

2 of the question.

3 A. Yes, we -- the team and myself put
4 together, you know, asset summaries of Highland
5 at various times for all the assets of
6 Highland, and not including the notes.

7 Q. Okay. And were those presentations
8 communicated to -- to Mr. Seery?

9 A. No. Well, look, I didn't tell -- I
10 didn't tell Mr. Seery. I don't know what
11 Mr. Dondero did with the information.

12 Q. Okay.

13 A. I did not have conversations with
14 Mr. Seery.

15 Q. Okay. Do you know who saw the
16 presentations that you put together that didn't
17 include the value of the related party notes?

18 A. We're talking presentations -- these
19 are -- these are Excel spreadsheets?

20 Q. Uh-huh.

21 A. I don't know who -- these were given
22 to -- to Jim Dondero. I don't know what was
23 done with them after that.

24 Q. Okay. You also mentioned earlier
25 that sometime during your tenure at Highland

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2 you knew of the practice of giving forgivable
3 loans to executives.

4 MR. MORRIS: Objection to the form
5 of the question.

6 Q. Can you -- can you tell me what you
7 recall about that practice?

8 MR. MORRIS: Objection to the form
9 of the question.

10 A. Yes, so there were -- there were --
11 during my tenure at Highland, there were loans
12 or -- given to employees that were later
13 forgiven at a future date and time.

14 Q. Okay. And when the loans were
15 given, did the notes, to your recollection, say
16 anything about the potential forgiveness term?

17 MR. MORRIS: Objection to the form
18 of the question.

19 A. When you say "did the notes," did
20 the promissory notes detail the forgiveness?

21 Q. Yes.

22 A. Not that I recall.

23 Q. And until such time as whatever was
24 to trigger the forgiveness occurred, were the
25 notes bona fide notes as far as you were

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2 concerned?

3 MR. MORRIS: Objection to the form
4 of the question.

5 A. Yes, similar to -- yes.

6 Q. Okay. You were going to say similar
7 to what?

8 A. Mr. Morris earlier today showed
9 notes of the financial statements about various
10 affiliate loans. I -- I -- I do recall these
11 notes because I -- at that time personally
12 worked on the -- the financial statements of
13 Highland. That was, you know, in my role as a
14 corporate accountant.

15 And there were -- those loans
16 were -- to the partners were detailed in the
17 notes to the financial statements, similar to
18 what we went through earlier today in the prior
19 testimony about what we saw with Highland
20 and -- and -- and the -- and HCMFA.

21 Q. Is it fair to say that on Highland's
22 balance sheet there were any number of assets
23 that the value of which could be affected by
24 subsequent events?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. Yes. I mean, yes, that -- there
4 are. And that is -- yes.

5 Q. Okay. And is it typical accounting
6 practice that until there is some certainty
7 about those potential future events, that asset
8 value listed on -- on the books doesn't take
9 into account those potential future events?

10 MR. MORRIS: Objection to the form
11 of the question.

12 A. Yeah, if those -- yes. If -- if
13 those future events, you know, at the time of
14 issuance are not known or knowable, like I
15 discussed earlier with, like, market practice,
16 asset dislocation, or, you know, I mean, things
17 like that, you -- I mean, it -- it could affect
18 its fair value --

19 Q. Okay.

20 A. -- in the future.

21 Q. And am I correct you wouldn't feel
22 compelled to footnote in every possible change
23 in -- in an asset when those possibilities are
24 still remote?

25 MR. MORRIS: Objection to the form